

Yorkshire Marina (Bridlington): Inspector's Report

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Front cover

Report to the First Secretary of State and to the Secretary of State for Transport

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Transport and Works Act 1992

Harbours Act 1964

The Bridlington Marina And Harbour Concurrent Public Local Inquiries

into

The Yorkshire Marina (Bridlington) (Works) Order 2000

Associated applications for a Direction for Deemed Planning Permission and for Listed Building Consent

The Bridlington Harbour Revision Order 2000

The Yorkshire Marina (Bridlington) Harbour Empowerment Order 2000

and

The Bridlington Harbour (Constitution) Revision Order 2002

Assessors:

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Professor Tom Pritchard PhD, BSc, FRSA

Inquiries held:

2 October 2001 to 4 October 2002

References:

East Riding of Yorkshire Council - P\25708\1\D0124.0

Bridlington Piers and Harbour Commissioners - BHR.PP/1636387

Government Departments - GHF 818; P89/4/34

Summary

The Yorkshire Marina (Bridlington) (Works) Order 2000

- This Order is made under Sections 3 and 5 of the Transport and Works Act 1992, and is known as "the Works Order".
- The East Riding of Yorkshire Council ("the Council") submitted the Order to the then Secretary of State for the Environment, Transport and the Regions for confirmation. The Council also seek deemed planning permission for the works which would be authorised by the Order, and listed building consents for works affecting two listed buildings.
- The Order was submitted on 9 October 2000, and there were 287 objections to it and to the Council's Orders generally outstanding at the commencement of the inquiries.
- The Order would authorise works necessary to create a marina and associated development at Bridlington.

Summary of Recommendations: that the Order be not made, and that the applications for deemed planning permission and listed building consent be refused.

The Bridlington Harbour Revision Order 2000

- This Order is made under Section 14 of the Harbours Act 1964, and is known as "the Revision Order".
- The Council submitted the Order to the then Secretary of State for Agriculture, Fisheries and Food for confirmation.
- The Order was submitted on 19 October 2000, and there were 27 objections specific to this Order outstanding at the commencement of the inquiries.
- The Order would vest the undertaking of the Bridlington Piers and Harbour Commissioners ("the Commissioners") in the Council as part of the Council's harbour undertaking, and would dissolve the Commissioners.

Summary of Recommendation: that the Order be not made.

The Yorkshire Marina (Bridlington) Harbour Empowerment Order 2000

- This Order is made under Section 16 of the Harbours Act 1964, and is known as "the Empowerment Order".
- The Council submitted the Order to the then Secretary of State for the Environment, Transport and the Regions for confirmation.
- The Order was submitted on 19 October 2000, and there were 19 objections specific to this Order outstanding at the commencement of the inquiries.
- The Order would establish the Yorkshire Harbour and Marina Authority, and provide for that Authority to have comprehensive powers and duties relating to the maintenance, regulation and operation of the Yorkshire Marina (including the Harbour).

Summary of Recommendation: that the Order be not made.

The Bridlington Harbour (Constitution) Revision Order 2002

- This Order is made under Section 14 of the Harbours Act 1964, and is known as "the Commissioners' Order".

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- The Commissioners submitted the Order to the then Secretary of State for Agriculture, Fisheries and Food for confirmation.
- The Order was submitted on 24 May 2001, and there was one objection and one late objection to it outstanding at the commencement of the inquiries.
- The Order would alter the existing constitution of the Commissioners in response to the guidance contained in the report of the former Department of the Environment, Transport and the Regions, "Modernising Trust Ports - A Guide to Good Governance".

Summary of Recommendation: that the Order be made subject to modifications.

1. Preamble

1.1 Between 2 October 2001 and 4 October 2002, I held concurrent public local inquiries ("the inquiries") for the purpose of hearing objections and representations made with regard to the following Orders which had been submitted for confirmation:

The Yorkshire Marina (Bridlington) (Works) Order 2000

The Bridlington Harbour Revision Order 2000

The Yorkshire Marina (Bridlington) Harbour Empowerment Order 2000 and

The Bridlington Harbour (Constitution) Revision Order 2002.

1.2 The Works Order was made under the Transport and Works Act 1992, and has associated with it applications for deemed planning permission and listed building consents for works described in the Order. Determination of the Works Order and the associated applications is now the responsibility of the First Secretary of State.

1.3 The other three Orders were made under the Harbours Act 1964. Determination of the applications for confirmation of all of these Orders is now the responsibility of the Secretary of State for Transport.

1.4 I held a pre inquiries meeting on 1 August 2001. Notes of that meeting are contained in Document X/1.

1.5 The inquiries took place at the Town Hall, Bridlington on 2, 3, 4, 5, 10, 11, 12, 17, 18, 19, 23, 24, 25, 26, 30 and 31 October 2001, 1 and 2 November 2001, 22, 23, 24 and 25 January 2002, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21 and 22 February 2002, 5, 6, 7, 12, 13, 14 and 15 March 2002, 15, 16, 17, 20, 21, 27, 28, 29, 30 and 31 May 2002, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17 and 19 July 2002, and 4 October 2002.

1.6 Lynn Moseley PhD, BArch, RIBA sat with me as Assessor on listed building issues. Professor Tom Pritchard PhD, BSc, FRSA sat with me as Assessor on environmental issues. Their reports to me are attached as Appendices C and D to this report.

1.7 I carried out site inspections accompanied by both Assessors on 31 July and on 12 September 2001, and only by Professor Pritchard on 13 September 2001. Further site inspections, accompanied by the appropriate Assessor and representatives of the parties to the inquiries, were carried out on 5 February and 15 July 2002 in relation to listed building issues, and on 5, 17 and 18 July 2002 in relation to the Orders generally. The site visits on 12 September 2001 and 5 July 2002 included off shore site visits.

2. Introduction

2.1 Bridlington is a town with a long history; it is mentioned in Domesday Book. It lies on Yorkshire's North Sea coast, some 60 kilometres north of the estuary of the River Humber, and around 7.5 kilometres south west of the cliffs and promontory of Flamborough Head.

2.2 The harbour at Bridlington has long been recognised as fulfilling an important function as a harbour of refuge. The harbour is currently formed by two stone piers, each built during the nineteenth century. The harbour has been operated for the last three hundred and six years by the Bridlington Piers and Harbour Commissioners, created under the Bridlington Harbour Act 1696.

The purpose of the Orders

2.3 **The Works Order** seeks to authorise construction work designed to create a marina and associated development at Bridlington. It would confer power on the Council to construct and maintain a southern breakwater and a quay wall with a lock in them at the entrance to the proposed marina. It would also authorise quay walls within the marina area and a protective eastern breakwater. Together, these works would create a marina with a minimum impounded water area of 72,000 square metres, a protected area of water at the entrance to the proposed marina and the existing harbour, and would allow the reclamation of areas below the mean high water mark which would provide a potentially developable area of reclaimed land of just over 147,000 square metres. In addition, the Works Order would authorise the compulsory acquisition of land alleged to be needed for those proposed works. The Council also seek a direction that outline planning permission should be deemed to be granted for the construction and use of the works referred to in the Works Order, and that listed building consent be granted to authorise those parts of the proposed works which affect the two piers at Bridlington, which are listed structures.

2.4 **The Revision Order** would vest the undertaking of the Commissioners in the Council as part of the Council's harbour undertaking, and would dissolve the Commissioners.

2.5 **The Empowerment Order** would establish the Yorkshire Harbour and Marina Authority, and provide for that Authority to have comprehensive powers and duties relating to the maintenance, regulation and operation of the Yorkshire Marina (including the harbour).

2.6 For convenience, the Works Order, the Revision Order and the Empowerment Order, when they are mentioned collectively, are referred to as "the Council's Orders" in this report.

2.7 **The Commissioners' Order** would alter the existing constitution of the Commissioners with the aim of giving effect to the guidance contained in the report of the former Department of the Environment, Transport and the Regions, "Modernising Trust Ports - A Guide to Good Governance" (Document ERYC 8). Under the proposed new constitution, there would be ten Commissioners plus a Chief Executive, who would also be a Commissioner. There would be requirements as to their selection and appointment, and they would retire in rotation.

Objectors and supporters

2.8 At the commencement of the inquiries, there were 287 objections outstanding to the Works Order or to the Council's Orders generally, and two representations concerning them. There were 433 expressions of support for the Works Order or for the Council's Orders generally, plus a petition in support containing 2,069 signatures. There were 27 objections specific to the Revision Order and 16 expressions of support for it. In relation to the Empowerment Order, there were 19 specific objections to it, and again 16 expressions of support. At the inquiries, there were 16 appearances for objectors to the Council's Orders, and 11 appearances for supporters. Eight people appeared at the inquiries to make representations on these Orders.

2.9 At the commencement of the inquiries, there was one objection and one late objection to the Commissioners' Order and two expressions of support for it. One objector to the Commissioners'

Order (the Council) appeared at the inquiries in relation to that Order specifically, as did the two supporters.

2.10 During the inquiries, one objection to the Works Order (that of Yorkshire Water Services Ltd) was withdrawn. Twenty one further objections to the Works Order were received (four of them from new objectors) following the advertisement by the Council of the impact of the proposals on certain accesses to the beach. One further representation was received (from the Ramblers' Association) following the submission of details of these proposals to amenity bodies. The circumstances in which and the basis on which those actions were taken are described in paragraphs 2.67 and 2.70 below.

2.11 A total of 99 letters was also received during the course of the inquiries. Of that total, 47 letters objected to the Council's Orders; 32 supported them; 9 made comments or provided information in relation to the proposals without being firmly in favour or against; 10 letters provided information on the impact of marina developments elsewhere in the UK; and one letter supplemented objections to the Commissioners' Order. The points made in these letters are covered in this report along with points made in the written representations received before the inquiries. The letters themselves comprise Document X/20.

2.12 Two further petitions were also submitted during the course of the inquiries. One (which I have made Document OBJ/225) was submitted by the Bridlington Protection Group. It contains 1,107 signatures of people opposed to the Works Order. The second was submitted by the Commissioners (Document OBJ/129). It contains 70 signatures of owners of private vessels and 31 signatures of owners of commercial and angling vessels opposed, in effect, to the Revision Order.

The main grounds of objection

2.13 The main grounds of objection to the Works Order include:

- the proposal is contrary to the relevant planning guidelines
- it is excessive in scale
- it is inappropriate in location
- it is defective in design
- it would not deliver the benefits claimed
- it would cause environmental damage
- it would adversely affect listed structures
- there is real doubt whether the development would be achieved, even if authorised.

2.14 The main grounds of objection to the Revision Order include:

- the proposed removal of the experienced Commissioners, and their replacement by the Council, who have no track record of harbour management
- concern that such a change could take place without any guarantee that the marina would be built.

2.15 The main grounds of objection to the Empowerment Order include:

- the extent of control by the Council over the proposed new Harbour and Marina Authority
- concern regarding the makeup of the proposed new Authority
- concern regarding the financial viability of the proposed new Authority, and the likely impact on users of the harbour and marina facilities and on Council Tax payers.

2.16 The main grounds of objection to the Commissioners' Order include:

- the Order is not in accord with the principles of the Trust Ports Review
- confirmation of the Order would lead to conflict, duplication and confusion, to the detriment of the efficient operation of the harbour and the marina, and of the efficient completion of the Council's project.
- there is no realistic prospect of the Commissioners proceeding with a marina scheme
- the Order would not, by itself, bring about the necessary socio-economic regeneration of Bridlington.

Statement of matters

2.17 A statement of matters about which the Secretaries of State particularly wish to be informed for the purposes of their consideration of the Council's Orders and associated applications was served under Rule 7(8) of the Transport and Works (Inquiries Procedure) Rules 1992 ("the Inquiries Procedure Rules") in July 2001. While those Rules only apply to the Works Order and associated applications, for consistency of approach the Secretaries of State asked that the spirit of the Rules should be applied to the other applications before the inquiries. The list of issues set out in the statement of matters is recorded in full in the minutes of the Pre Inquiries Meeting (Document X/1), and copies of the statement of matters were made available to all attending the inquiries.

Statutory formalities

2.18 On behalf of the Council, it was confirmed that the statutory formalities had been complied with in relation to the Council's Orders, and a similar confirmation was provided on behalf of the Commissioners in connection with the Commissioners' Order. The adjournment applications and some of the legal submissions noted below to some extent represent challenges to the carrying out of the statutory formalities in connection with the Council's Orders. I deal with the adjournment applications between paragraphs 2.19 and 2.38. The legal submissions are dealt with between paragraphs 2.39 and 2.127 and between paragraphs 11.3 and 11.61.

Applications for adjournment

2.19 At the opening of the inquiries, two separate applications were made for adjournment of the inquiries in relation to the Council's Orders.

2.20 The first application for adjournment was based on two grounds - a contention that all the notices required to be served on those whose interests would be affected by the Works Order had not been served, and an allegation that there were errors in the plan and book of reference submitted with the Works Order which prejudiced the rights of the Commissioners.

2.21 These arguments are set out in detail in Document OBJ/47. Documents OBJ/48 to OBJ/64 inclusive were submitted in support of the application. The response of the Council is set out in Document APP/29, and a reply to that response is contained in Document OBJ/150.

2.22 During the course of argument on the application, additional evidence and information was forthcoming, which is not contained in the Documents referred to, and I have therefore recorded this in paragraphs 2.25 to 2.30 below.

2.23 As to the first ground of the application, five interests were alleged not to have been served with appropriate notice:

- the owners of a total of 92 boats, who pay an annual fee to the Commissioners for the use of mud berths in the harbour
- the Commissioners, in relation to a semi circular area with a radius of approximately 137 metres around the seaward side of the harbour entrance

- the public, in relation to a customary right to dig for bait and to fish in the area of sea and foreshore around the harbour entrance
- certain property owners who enjoy a right to collect seaweed and to take sand and gravel from the foreshore within parcel 17 of the plan and book of reference
- the public, in relation to rights of way over the slip road from South Cliff Road to the west end of the harbour, and the Lifeboat Slip from the west end of the harbour to the beach, which would be extinguished by the Works Order.

2.24 As to the second ground of application, paragraphs 38 and 39 of Document OBJ/47 alleged errors in the plan accompanying the book of reference for the Works Order, which, it was claimed, had prejudiced the Commissioners.

2.25 In relation to the users of mud berths, the Harbour Master indicated that, although a mud berth was allocated to a boat for a year, boats could be required to move from their berths immediately in the case of any emergency, or on a few days' notice when operations such as dredging were taking place. The Council argued that this factor, together with the detailed terms of the mooring conditions for the mud berths (which, despite the practice of the Harbour Master, did not guarantee a specific berth), was indicative of a bare licence rather than of an interest sufficient to bring mud berth users within the definition of "occupiers" contained in Rule 2 of the Transport and Works (Applications and Objections Procedure) Rules 1992 ("the Applications Rules"). (Those Rules continue to apply to the Works Order, despite the later making of the 2000 Applications Rules, SI 2000 No 2190, because the Works Order was submitted before 16 October 2000).

2.26 Document OBJ/193 listed the people who paid to use mud berths in the harbour during 2001. All the berths appeared to have been taken during that year. At least 11 of the owners concerned were registered as supporters of (8 owners) or objectors to (3 owners) the Council's Orders at the commencement of the inquiries, and indeed five owners (one a supporter and one an objector) appeared to have been present on the first day of the inquiries when this application for adjournment was made, but none of them supported the application for adjournment.

2.27 Although the Commissioners had made it clear in correspondence before the opening of the inquiries that they challenged the right of the Council to amend the book of reference for the Works Order after the date for the inquiries was fixed, and they were represented at the inquiries and made a written submission on this matter (Document OBJ/152), they gave no indication of support for the application for an adjournment based either on the alleged failure to serve notice on them in relation to part of their interests in the area affected by the Order or on the other alleged inadequacies of the plan and book of reference.

2.28 Some of the people who had signed Document OBJ/52 regarding the customary right to dig for bait and to fish in the area of land around the harbour entrance were present at the inquiries and had made written objections. This included the first signatory to that document. Neither he nor any of the other people who had signed the document made any submission in support of the adjournment application.

2.29 A statutory declaration was produced (Document OBJ/61), made by a Commissioner of 26 years' standing, who had lived in Bridlington for the whole of his life and worked from Bridlington Harbour for a substantial period. He stated in that statutory declaration that the slip road and the Lifeboat Slip were in the ownership of the Commissioners, but had been used by the general public to gain access to the beach since at least 1945. Evidence was given that the statutory declaration had been made with the authority of the Commissioners, although it transpired later in the inquiries, both from the evidence of the Solicitor to the Commissioners and from Document APP/201, that this was not the case. It was not claimed that this declaration amounted to the dedication of a right of way over the slips, but rather confirmation of the existence of public rights over them.

2.30 In support of the application, reference was made to *Ramblers' Association v Kent County Council* (1990) 60 P&CR 464 (Document OBJ/64), in which the Divisional Court set aside an Order

made under Section 116 of the Highways Act 1980 because of a failure to meet the procedural notice requirements. On behalf of the Council, it was submitted that this was a decision which turned on its own facts, under a different statutory code, where a misleading notice had been issued, which was not a situation which applied in this case.

2.31 Although in form the application was presented as an application for adjournment (and I dealt with that aspect of it), I ruled that in reality it amounted to a legal submission that the requirements of the Applications Rules had not been properly carried out by the Council. Paragraphs 12 and 13 of Document OBJ/47 argued, in effect, that this alleged defect was one which it was impossible for the Council to remedy. The documents containing the submission and the Council's response are therefore appended to this report, and passed to the Secretary of State for determination of the legal point, along with other legal submissions to which reference is made in paragraphs 2.39 to 2.127 below. I return to these legal issues at paragraphs 11.3 to 11.61 below.

2.32 As regards the adjournment application, however, I was not prepared to accede to this. I concluded that there was extensive local knowledge of the Council's proposals and of the inquiries having regard to the number of objections and representations received concerning the Orders, the documents concerning the scheme (ERYC 62 and ERYC 63) which had been sent in October 2000 to every house in Bridlington (some 17,100 houses) and to 1,200 businesses in the area, the substantial attendance both at the Pre Inquiries Meeting and at the opening of the inquiries, and the extensive coverage of the subject which I had seen and heard in local and regional newspapers and on local radio and television. Many of the individuals and groups allegedly affected by the failure to serve notice on them had made representations on the Orders, and some of them were present at the inquiries. Those who were present had not supported the request for an adjournment. Neither had the Commissioners, despite the claim that they had been prejudiced by alleged errors in the plan accompanying the book of reference. Finally, it seemed to me that an adjournment would serve no purpose, since the person who made this application contended that any defect in the service of notices could not be remedied by the Council. If that contention were to be well founded in law, it was an issue which could have been challenged in the courts, but clearly an adjournment of the inquiries would not assist in overcoming it.

2.33 When the reply to the Council's response to this application was made later in the inquiries (Document OBJ/150), it was expressly made on the basis of replying to what I had ruled was a legal submission, rather than on the basis of pursuing a request for an adjournment.

2.34 Subsequently, the case of representative property owners with alleged rights to collect seaweed and sand from the foreshore and the case for the existence of public rights of way over accesses to the beach were argued in detail at the inquiries, in circumstances set out in paragraphs 2.76 to 2.81 and 2.65 to 2.68 respectively below.

2.35 The second application for adjournment of the inquiries into the Council's Orders was made on the basis that the deposit documents in connection with the Works Order were incomplete and misleading, having been made available in parts, to the confusion of objectors. It was claimed that draft copies of the reports to the Council of various experts should be made available to the objectors, together with the terms of reference given to those experts, and that all press releases issued by the Council in connection with their marina proposal should be produced by the Council.

2.36 In response, the Council stated that many more documents had been placed on deposit than were strictly required. Whilst the Council could not agree to produce interim or draft reports, all available relevant reports had been placed on deposit, and copies of terms of reference and press releases would be made available as requested.

2.37 I ruled that none of the additional documents requested had been necessary to allow the objectors to prepare their objections, and I was not prepared to agree that an adjournment was required in order to allow consideration by the objectors of the minimal additional material which was now being made available. This was particularly the case since it was clear that the inquiries would run for some days

before the objectors would have any need to refer to the additional material in any contribution they would make to the inquiries.

2.38 At a later stage, during one of the adjournments of the inquiries, Mr Colin Seymour (who had made the adjournment application dealt with at paragraphs 2.20 to 2.32 above) made a written submission that the inquiries should be abandoned (Document OBJ/114). When the inquiries were resumed, however, he withdrew this submission following the receipt by him of correspondence from the then Department of Transport, Local Government and the Regions which comprises Document X/11. Since the submission had been accepted as an inquiry document, the Council asked that their planned response to the submission should also be added to the Inquiry Library. It is Document APP/135.

Legal submissions

2.39 During the course of the inquiries, Mr Seymour made fourteen further submissions which I regard as legal submissions. He referred to some of them as procedural submissions, but I consider that many of them are submissions on legal points, and, where that is my view, I have dealt with them on that basis. In order to avoid any confusion about how Mr Seymour's various submissions have been dealt with in this report, I have set out in Appendix E a list of those submissions and a statement of where each of them has been addressed in this report.

2.40 Mr Seymour's first legal submission was to the effect that **the byelaw making power contained in Article 24 of the Empowerment Order was defective**, in that the area within which the byelaws would operate was uncertain, because the harbour map (Document ERYC 6), by which the area of operation of the byelaws is to be determined, did not incorporate a landward side boundary. Moreover, it was contended that the purposes for which byelaws might be made under Article 24 would go beyond the scope of good rule and government byelaws made under Section 235 of the Local Government Act 1972, and would also potentially infringe public and customary rights, in contravention of the Human Rights Act 1998.

2.41 In response, the Council argued that the limits within which the byelaws would operate would be readily ascertainable; that the byelaw making provisions of the Local Government Act 1972 were imported merely to provide the procedural machinery for the confirmation of byelaws made under article 24 of the Empowerment Order; that a statutory provision in primary or secondary legislation could override public or customary rights; and that Article 24 followed a well worn precedent.

2.42 The full arguments of Mr Seymour on this submission are set out in Documents OBJ/65 (which refers also to OBJ/66) and in OBJ/151. The Council's response is contained in APP/29 (tab 2).

2.43 Mr Seymour's second legal submission was to the effect that the Works Order contravened the provisions of Article 11 of the European Convention on Human Rights, by **denying freedom of assembly and association on land customarily used by the public for that purpose** on the foreshore at Bridlington adjacent to the Spa.

2.44 The Council's response was that the general rights of the public for recreational use of open space were not within the scope of Article 11. Where the State properly recognised that a public purpose would be served by authorising specific work, it was open to the State to grant authorisation for land to be acquired compulsorily to allow that work to be carried out. The determination of the question whether the works proposed by the Council should be allowed in the public interest was one of the purposes of these inquiries.

2.45 The full arguments of Mr Seymour on this submission are set out in Documents OBJ/67 (which refers also to OBJ/68 to OBJ/70 inclusive) and OBJ/151. During the presentation of Document OBJ/151 on this submission, Mr Seymour deleted paragraphs 11 to 13, paragraph 17 and the second and third sentences of paragraph 21 of the section of Document OBJ/151 dealing with his Legal Submission No 2. The Council's response to the submission is contained in APP/29 (tab 3).

2.46 Mr Seymour's third legal submission was to the effect that Article 21(1) of the Works Order was incompatible with Article 6 of the European Convention on Human Rights and Article 1 of the First Protocol, in that **it would prevent the taking of any enforcement action in respect of noise nuisance caused by the works.**

2.47 The Council's response was that Article 21 did not deprive any aggrieved person of a fair hearing regarding a noise nuisance claim, because it applied only to cases where there was in any event an automatic defence under Section 82(9) of the Environmental Protection Act 1990.

2.48 Mr Seymour offered to withdraw this submission if the Council would agree to include a statement within Article 21 of the Works Order to the effect that "Nothing in this Article prevents proceedings being instituted at common law or under Section 82(1) of the Environmental Protection Act 1990 in respect of a noise nuisance from the works". The Council were not prepared to add those words to Article 21, because they regarded them as unnecessary.

2.49 The full arguments of Mr Seymour on this submission are set out in Documents OBJ/71 (which refers also to OBJ/72 and OBJ/73) and OBJ/151. The Council's response is contained in APP/29 (tab 4).

2.50 Mr Seymour's fourth legal submission was to the effect that **the Works Order cannot operate to extinguish public, customary and private rights** within Bridlington Harbour.

2.51 The Council's response was that the Transport and Works Act 1992 was sufficiently widely drawn to allow an Order made under it to extinguish public and customary rights, and to extinguish private rights upon payment of compensation.

2.52 The full arguments of Mr Seymour on this submission are set out in Documents OBJ/74 and OBJ/151. The Council's response to the submission is contained in APP/29 (tab 5).

2.53 Mr Seymour's fifth legal submission was to the effect that **the repeal of the Bridlington Harbour Act 1837 proposed in the Revision Order was beyond the powers conferred by the Harbours Act 1964.** This was because he claimed that the 1837 Act was a public Act (as indicated in Section 123 of that Act), and Section 14 of the 1964 Act only permitted the repeal of statutory provisions of local application. On the other hand, if his submission on that point was rejected, he argued in the alternative that Section 60 of the 1964 Act prohibited the repeal or amendment of any provision in a local Act, the Bill for which was promoted by a harbour authority, except on the application of that authority. Thus, if the 1837 Act was considered to be a local Act, it was argued that it still could not be repealed by the Revision Order, because the Revision Order was not promoted by the harbour authority which promoted the 1837 Act. On the contrary, that harbour authority (the Commissioners) opposed the Revision Order.

2.54 The Council's response was that the Bridlington Harbour Act 1837 fell within the definition of statutory provisions of local application, and that Section 123 of that Act (which provided that the Act should be deemed a public Act) was included in the Act only to avoid the need for the formal proof which would otherwise have been necessary before judicial notice would be taken of a private Act.

2.55 As regards Section 60 of the Harbours Act, the Council contended that this Section was a free standing provision, which did not apply to Harbour Revision Orders promoted under Section 14 of the Act.

2.56 The full arguments of Mr Seymour on this point are set out in Documents OBJ/112, OBJ/113 and OBJ/178. The Council's response is contained in APP/29 (behind tab 47) and in Documents APP/135 and APP/203.

2.57 Paragraph 2.20 above records the fact that Mr Seymour's application for the adjournment of the inquiries was based, in part, on an allegation that **the notice requirements of the Transport and Works (Applications and Objections) Procedure Rules 1992 had not been properly carried out by the Council.** Mr Seymour developed that general point, however, in a number of further specific

submissions which I regard as legal submissions. I deal with both the general and the specific points between paragraphs 11.17 and 11.38 below.

2.58 Mr Seymour's next legal submission was to the effect that **there was a public right of way over the South Pier, which would be adversely affected by the Council's Orders**. This right of way was accepted as existing by the Borough Engineer of the then Bridlington Borough Council in 1946, and the Council could therefore not now deny that such public rights existed over the South Pier. Mr Seymour contended that the repeal of all existing Acts of Parliament affecting Bridlington Harbour (including Section 16 of the Bridlington Harbour Confirmation Act 1928), which the Council sought to achieve in the Revision Order, would remove the free right of access granted by Section 16 to all persons, at all times, to all parts of the harbour (which included the South Pier, the Harbour Slip, the steps to the Grotto and the Old Lifeboat Slip). In addition, Article 18 of the Empowerment Order would require people to seek consent before using any appropriated part of the marina set aside as preferential: and the power to make byelaws regulating or prohibiting fishing under Art 24 of the Empowerment Order could prevent people wishing to fish from walking along the South Pier.

2.59 The Council's response was that questions of public rights of way over the South Pier, the Harbour Slipway and the steps beside the Grotto were irrelevant to the inquiries. If such rights existed, no authority was being sought to stop up or divert them. The Council would have no intention of preventing access to the harbour beyond the extent to which it was currently regulated for operational or safety reasons. As regards the Old Lifeboat Slip, the Council's position on that is dealt with in greater detail at paragraph 2.63 below.

2.60 The full arguments of Mr Seymour on this submission are set out in Documents OBJ/183 and OBJ/217. The Council's response is contained in APP/232.

2.61 Mr Seymour's next legal submission arose in the following way. On 4 October 2001, he served a notice under Section 56 of the Highways Act 1980 (Document OBJ/89) on the Council, requiring the Council to admit that **the Old Lifeboat Slip (references 2 and 5 in the Book of Reference for the Works Order) was a highway**. On 5 October 2001, Mr Seymour served a similar notice on the Commissioners. On the same day, the Clerk to the Commissioners admitted that the Old Lifeboat Slip was a highway for all manner of user for the whole of its width from South Cliff Road to the sea shore, and that the way was maintainable by the Commissioners. Mr Seymour therefore argued that the Old Lifeboat Slip was a highway; that the Council had not given notice that the Works Order would extinguish it; and that such extinguishment would thus be unlawful.

2.62 The Council's initial response to this submission was to the effect that enquiries made before submitting the application for the Works Order did not reveal the Old Lifeboat Slipway as being subject to public rights of way. The statutory declaration (OBJ/61) referred to in paragraph 2.29 above was not received by the Council until the beginning of the inquiries, having been sworn on 1 October 2001. Mr Seymour's notice under Section 56 of the Highways Act 1980 was not served until 4 October 2001, and this required the Council to raise a number of questions with the Commissioners before being able to reach a conclusion on it. The Council argued that definitive responses to those questions had still not been received when the inquiries closed, a year later.

2.63 The Council originally contended that, if the Old Lifeboat Slip was a highway, notice under Rule 9(8) of the Applications Rules could still be posted, giving people who wished to object an opportunity to do so. This would not be notice given "forthwith" after the making of the application, but Rule 12 of the Applications Rules enabled the Secretary of State to waive their requirements, including the requirement of Rule 9. Later, however, the Council argued that Rule 9 was not engaged, so that no waiver was required.

2.64 Mr Seymour's representations on this submission (which was supported by Mr Thompson) are contained in Documents OBJ/88, OBJ/105, OBJ/174, OBJ/179 and OBJ/180. The Council's response on this submission is contained in Documents APP/29 behind tab 47 and in APP/136, APP/200, APP/201 and APP/219.

2.65 Subsequently, during the inquiries, Mr Seymour made a submission that **other accesses to the beach were public rights of way**, namely the slipway presently used by the lifeboat to gain access to the sea, which runs from South Marine Drive to the beach; two sets of steps from the Promenade to the beach; a set of steps from South Cliff Road to the South Pier by the Grotto; and a right of way on foot and horseback from South Cliff Road to the sea shore over Parcels 4 and 3 and down the slipway included in Parcel 17 of the Book of Reference for the Works Order. He made the point that the Council as highway authority had a statutory duty to assert and protect the rights of the public over highways within their area, whereas he claimed that the impact of the Council's Orders would be to deny the continuation of these ways.

2.66 Mr Seymour claimed that the Council were seeking to stop up these ways without giving appropriate notice under the Applications Rules.

2.67 The Council did not accept that two of the alleged rights of way identified by Mr Seymour were affected by their Orders on a permanent basis, namely the steps by the Grotto and the slip road from South Cliff Road to the base of the South Pier. As regards the remaining areas argued by Mr Seymour to be rights of way, although the Council did not accept that public rights of way existed over them, precautionary site and other statutory notices were posted by the Council on a without prejudice basis on the Old Lifeboat Slip and three other beach accesses (not including the present Lifeboat Slip) on 20 December 2001, inviting objections by 5 February 2002. The publication of these notices led to twenty one further objections to the Council's Works Order being received during the inquiries, seventeen from existing objectors to the Council's Orders, and four from new objectors. I deal with the procedure followed in relation to these objections at paragraph 2.133 below; the cases concerning the objections at paragraphs 6.218 to 6.238 below; my view on the arguments concerning the legal status of the ways at paragraphs 11.35 to 11.36; and my conclusion on the merits of the objections at paragraph 11.165.

2.68 Mr Seymour's representations on this submission are contained in Documents OBJ/105, OBJ/174, OBJ/179 and OBJ/180. The Council's response is contained in Documents APP/136, APP/200, APP/201 and APP/219.

2.69 Mr Seymour next argued that the inquiries had no authority to determine the issue of stopping up the alleged rights of way referred to in the Council's notices of 20 December 2001, because **copies of the relevant documents were not deposited with the organisations prescribed in paragraph 10(a) of Schedule 5 to the Applications Rules, and the hearing of the matter would therefore be outside the powers of the inquiries.**

2.70 Mr Seymour said to the inquiries on 6 March 2002, however, that he would not object (subject to considering the Rules) to the Council giving notice to the prescribed bodies at that stage. That action was taken by the Council on a without prejudice basis on 17 April 2002 (Document APP/214). As a result, representations were received from the Ramblers' Association, who appeared at the inquiries as an interested party. Mr Seymour accepted at the inquiries on 21 May 2002 that, following that action, it would be unreasonable to say that people or bodies had been prejudiced by any lack of knowledge of the application. He argued, however, that it remained the case that the Rules should be and had not been followed.

2.71 The Council responded that the Inspector had jurisdiction to hear all matters before the inquiries which were relevant to the Council's Orders. When a claim that a highway existed arose during an inquiry into a statutory Order, it could be dealt with during that inquiry rather than at a separate hearing.

2.72 These arguments are contained in OBJ/143 and OBJ/180 and in APP/201. The representations of the Ramblers are dealt with at paragraph 7.37 below, and my view on this legal issue raised by Mr Seymour is to be found at paragraph 11.38.

2.73 Mr Seymour submitted in his statement of case on the applications for listed building consents that **an application for listed building consent could not be made after an application for an Order under the Transport and Works Act had been submitted.**

2.74 The Council responded that section 17 of the Transport and Works Act provided for the referral to the Secretary of State of an application for listed building consent *"in any case where consent is required in consequence of the proposals included in an application for an order under sections 1 or 3"* of the Transport and Works Act. There was no statutory qualification as to when the application for listed building consent had to be made.

2.75 The full arguments of Mr Seymour on this point are contained at paragraphs 8 and 9 of his listed building consent statement of case. The Council's response is at paragraphs 9 and 10 of Document APP/258.

2.76 During the inquiries, a representation amounting to a late objection was made on behalf of Mr and Mrs M Kilburn of 42 Horsforth Avenue, Bridlington. It raised objections regarding the loss of the part of beach nearest to their home if the Works Order were approved, and also the issue of noise during the construction period. These matters are dealt with in the general cases of the objectors in section 6 of this report. The representation on behalf of Mr and Mrs Kilburn also raised, however, in a case specific way, the general point made by Mr Seymour in his adjournment application regarding **the loss of alleged rights enjoyed by numerous local residents to take sand and seaweed from the foreshore** (paragraphs 2.23 and 2.34 above). Mr and Mrs Kilburn's case was put by Mr Seymour in the following way.

2.77 Along with the owners of all other properties built on an area of 41 acres and 37 perches conveyed on 19 December 1871 by the Trustees of Harrington Hudson to Godfrey Rhodes, Mr and Mrs Kilburn had the right to take seaweed, gravel and sand from the sea shore to use on their land, but not for sale.

2.78 Seaweed was a valuable form of fertiliser for domestic gardens, and gravel and sand from the seashore could be used to maintain the unmade and unadopted road behind Mr and Mrs Kilburn's property.

2.79 This was still, therefore, a private right of value. It would be affected if the Works Order were confirmed, in that part of the beach over which the rights were exercisable would be built upon. This interference with their rights had not been the subject of any notice given by the Council to Mr and Mrs Kilburn or to any of the other people entitled to similar rights. The Council had therefore not complied with the Applications Rules, and were seeking to act in contravention of Article 1 of the First Protocol to the European Convention on Human Rights, which protected the right of an individual to the peaceful enjoyment of his possessions.

2.80 The Council's response was that the Land Certificate to Mr and Mrs Kilburn's property did not include reference to their alleged right to take seaweed, sand and gravel from the beach. This was not surprising, because such rights had not been referred to in any document comprised in the title to Mr and Mrs Kilburn's property between 1897 and the present day. There was no evidence that the licence granted in the 1871 conveyance to Godfrey Rhodes was ever assigned. There was therefore no requirement for the Council to serve notice on Mr and Mrs Kilburn, and, in the light of that, no issue arose under the Human Rights Act.

2.81 The full arguments of Mr Seymour on behalf of Mr and Mrs Kilburn are set out in document INTP/P3, and the Council's response is contained in Document APP/218. Copies of the original documents on which those arguments are based are contained in Document APP/AP8. I consider the implications of those documents, along with the legal submissions of the parties, at paragraphs 11.31 to 11.33 below.

2.82 Mr Seymour's next legal submission was to the effect that **the cobbled section of the Old Lifeboat Slip was owned by the Harbour Commissioners**. He contended that the Commissioners had maintained and repaired that section of the Old Lifeboat Slip for over 100 years. They had also acted as owners by granting permission for the extension of the Old Lifeboat Slip in the 1870s and by collecting a payment from people using the Old Lifeboat Slip to cart materials in the 1880s. Mr Seymour argued that the Commissioners' title to the cobbled section of the Old Lifeboat Slip was not challenged until 2000, and that the Commissioners had thus acquired title to the cobbled section of the

Old Lifeboat Slip by adverse possession, quite apart from their statutory title to the slipway under Section 4 of the 1837 Act.

2.83 The Council's response was that no such claim of title had been made by the Commissioners. The permissions granted by the Commissioners in the 1870s and 1880s in connection with the Old Lifeboat Slip were consistent with their jurisdiction over the harbour rather than with ownership. The vesting provision in Section 4 of the 1837 Act did not vest the land on which the slip stood in the Commissioners. The Council said that title documents which they had produced were more conclusive than the various plans or historical documents produced by Mr Seymour. They also made the point that the Commissioners had not produced evidence to the inquiries or cross examined on this alleged dispute over ownership.

2.84 The full arguments of Mr Seymour on this submission are contained in Documents OBJ/118, OBJ/181, OBJ/184, OBJ/185, OBJ/216 and OBJ/218. The Council's response is contained in APP/202, APP/231 and APP/233.

2.85 The next legal submission was made on behalf of the Bridlington Protection Group, and was supported by Mr Thompson and by Mr Seymour. It concerned **the appropriation for planning purposes by the Council of the Spa Promenade, the Princess Mary Promenade and part of the Foreshore.**

2.86 This appropriation had been carried out by the Council in March 2000, in order to make part of the land owned by the Council and affected by the Works Order available for development as proposed in the Works Order. The objectors argued that the appropriation had not been carried out in accordance with the requirements of Section 122 of the Local Government Act 1972, in that the land involved exceeded 250 square yards (the maximum figure for appropriation of open space allowed under Section 122 (2) (a) of the Act); and the Council could not say that this well used and award winning open space was "*no longer needed for the purpose for which it (was) held immediately before the appropriation*". The Council had also failed to refer, in their public notice concerning the appropriation, to the relevant provisions of the Town and Country Planning Act 1990.

2.87 In response, the Council stated that the appropriation was carried out in accordance with the requirements of Section 122 (2) (A) of the Local Government Act 1972 (subsection (A) having been added by the Local Government, Planning and Land Act 1980). This provision allowed the Council to appropriate larger areas of open space, provided that they fulfilled advertising requirements and considered any objections. The issue of whether the land was no longer required for the original purpose was a matter solely for the local authority to decide, acting in good faith. Document APP/33 made it clear that this was done by the Council. Public access to the promenades would continue to be available once development had been carried out. Any challenge to the procedure followed by the Council on the appropriation should have been mounted at the time by way of application for judicial review rather than being raised more than a year later at the inquiries.

2.88 Section 237 of the Town and Country Planning Act 1990 came into play to override any private rights only once development had been approved. There was no requirement for the Council to refer to the Act of 1990 at the appropriation stage.

2.89 The full arguments of the parties on this submission are contained in Documents OBJ/75 to OBJ/78 inclusive and APP/30 to APP/34 inclusive plus APP/43.

2.90 Mr Thompson submitted that there was **a public right of way over the beach between Wilsthorpe and the Old Lifeboat Slip at Bridlington.** He said that this was granted by way of a reservation to the Crown contained in clause 3 of a conveyance of 15 June 1936 between the Crown and Bridlington Corporation (Document APP/AP8A behind tab 84).

2.91 The Council denied that the Conveyance had that effect, but contended in any event that a confirmed Order under the Transport and Works Act would override any public rights which were inconsistent with it.

2.92 On behalf of the Bridlington Protection Group, Mr Charlesworth argued that the effect of the Council's Orders would be to prevent all conventional line fishing from the South Pier. He argued that this would be **a contravention of Article 17 of the European Convention of Human Rights**.

2.93 The Council responded that the right to fish was not a Convention right, and that therefore Article 17 was not engaged.

2.94 Mr Robinson argued that there had been so many changes made during the inquiries to the Council's original application that **the case now put amounted in effect to a new application**, and the Council should be required to start the whole process again.

2.95 The Council responded that amendments to the applications made might be submitted during the inquiries, and would then form part of the body of evidence on which the Inspector would report to the Secretary of State.

2.96 There were then two legal submissions made on behalf of the Commissioners.

2.97 The first of these concerned **the adequacy of the Environmental Statement prepared on behalf of the Council**.

2.98 The Commissioners argued that the Environmental Statement ("ES") did not seek to assess the environmental impact of the topside works. It specifically excluded them from the assessment. But Annex IV of European Directive 85/337/EEC, as amended by Directive 91/11/EC, required that assessing the likely significant effects of the proposed project on the environment should include a requirement to deal with indirect or secondary effects.

2.99 Furthermore, the assessment of impacts in the ES was based on indicative works and indicative plans and sections, showing broad land uses for residential, retail, leisure and commercial uses, and showing levels "yet to be confirmed". Guidance in Circular 2/99 made it clear that, in dealing with planning applications, it was necessary to have sufficient information available on which to judge the environmental effects of a proposal. *R v Rochdale MBC (2001) 81 PCR 27* made it clear that the application must be based on a specific layout or, at the least, based on parameters which would determine the specific layout, and which could be properly assessed.

2.100 There was no assessment in the ES of the impact of the marina and the topside land uses on the vitality and viability of the existing town centre. There was no assessment of alternative sites for or sizes of the marina, despite the fact that an alternative site was recommended for such a development within the adopted Local Plan. There was no researched assessment of the impact of the works on the sedimentary transport regime in Bridlington Bay and the effect on beaches and the Smithic Bank. There was no adequate research on the suitability of dredged material for the reclamation works, and insufficient work had been done to forecast the volume of dredging and bay disposal.

2.101 The Council responded that the topside development was not part of the project; nor was it an indirect effect of the proposed development. Paragraph 82 of Circular 2/99 provided that an ES should be prepared on *"a realistic basis and without unnecessary elaboration"*. The decision in *R v Rochdale MBC ex parte Milne* made it clear that the development which was to be assessed was that which was proposed to be carried out and not some other. Alternatives were considered by the Council, in outline, as required by the relevant legislation.

2.102 Rule 6 (9) of the Applications Rules allowed the Secretary of State to direct the provision of any information which should have been provided in support of any application, but which had been omitted. No such direction had been made in this case.

2.103 The full submissions of the Commissioners on this matter are contained in paragraphs 4.30 to 4.33 of Document OBJ/P21 and paragraphs 2.15 to 2.20 of Document OBJ/222. The response of the Council is contained in paragraphs 12 to 39 of Document APP/264.

2.104 The final legal submission in relation to the Council's Orders concerned **notice served by the Council on the Commissioners of the proposed compulsory acquisition of plot 16 in the book of reference regarding the Works Order.**

2.105 The Council served notices on people whose interests in land were affected by their proposals for compulsory acquisition on 5 October 2000. The notice served on the Commissioners on that date dealt with plots 5 to 15 inclusive. The book of reference included the relevant area of seabed comprising plot 16, but failed to identify the Commissioners' interest in that land, despite the fact that the Council had previously been made aware of that interest. The Council recognised their omission on 23 August 2001, and served a second notice on the Commissioners on that date dealing with their interest in plot 16. The Commissioners claimed that that notice was out of time and of no effect.

2.106 The Commissioners pointed out that Rule 11(1) of the Applications Rules allowed an applicant to submit various documents to the Secretary of State after the date of the application. That was subject, however, to sub paragraphs 2 and 3 of the Rule. Sub paragraph 2 excluded from the permission given in Rule 11(1) documents which would authorise the compulsory acquisition of land which was not contained in the application; and sub paragraph 3 provided that no amending document could be served after the date on which the applicant was obliged to serve a full statement of case on the Secretary of State. In this instance a full statement of case was required to be served six weeks after 30 January 2001, and it was in fact served on 13 March 2001.

2.107 The Commissioners contended that the Council were prevented by both Rules 11(2) and 11(3) from amending their original notice to the Commissioners. They pointed out, moreover, that Rules 11(2) and (3) were excluded from the waiver provisions contained in Rule 12. They therefore argued that the Council were precluded from acquiring compulsorily that part of the Commissioners' seabed outside the harbour entrance included within plot 16.

2.108 In response, the Council accepted that the second notice was served on the Commissioners out of time. They made the point, however, that the Commissioners had already objected to all three of the Council's Orders, and were allowed a further 42 day period to make a further objection to the compulsory acquisition of plot 16. They did in fact lodge a further objection, albeit on a without prejudice basis.

2.109 The documents sent to the Commissioners by the Council at the correct time included the proposed acquisition of plot 16, even though the Commissioners' interest in that plot was not noted in the book of reference. The Commissioners should therefore have been aware that their land within plot 16 was proposed to be acquired.

2.110 By the time the Council recognised the error, it was too late to submit amendments under Rule 11, but that did not prevent a request for amendment being made at the inquiries.

2.111 The Council argued that the Commissioners had not been prejudiced by the late notice.

2.112 The full arguments of the parties on this submission are contained in Document OBJ/152 and APP/208. In addition, I asked Counsel for the Commissioners to specify at the inquiries any prejudice the Commissioners had suffered as a result of the late notice they had received in relation to plot 16. Mr Gray said that, at low water springs, people could walk from the end of the South Pier to the North Pier. There was a right of way there, and it was used by people to gain access to dig for bait. The Commissioners regarded themselves as having a duty to protect that right of way and also the general navigation rights in that area. Whilst the Commissioners were served with late notice, the public were not, and the prejudice the Commissioners had suffered was therefore the possibility of action by the public in pursuit of the protection of these rights.

2.113 Two legal submissions were also made in relation to the Commissioners' Order.

2.114 Mr Seymour argued that **the tests for confirmation of the Commissioners' Order contained in Section 14 (2) of the Harbours Act 1964** meant that, for the Council to succeed in its objection to the Order, the Council must establish that the Commissioners had failed to manage the harbour in an

efficient and economical manner in the past, and that they would be unlikely to secure the improvement, maintenance or management of the harbour in an efficient and economical manner in the future.

2.115 In response, the Council contended that it was open to the decision maker under Section 14 (2) to have regard to the question whether the continuation of the Commissioners was desirable not just on their own merits, but in the light of the alternative proposals put forward by the Council. The Council claimed that Mr Seymour started from the position that the continuation of the Commissioners was desirable, but that that was a false starting point. In reality, the first question was whether that was the case. In answering that question, the alternative proposals put forward by the Council provided material considerations. The alternative would be to reconstitute the Commissioners under their Order, but then to abolish them if the Council's Empowerment Order were to be confirmed. This would be a wasteful and impracticable process.

2.116 The full arguments of Mr Seymour on this issue are contained at paragraphs 19 to 26 of Document S/1. The response of the Council is contained in paragraphs 3 to 10 of Document 0/3.

2.117 Mr Seymour's second legal submission on the Commissioners' Order made substantially the same point in a different context. It concerned **the right to a fair hearing under Article 6 of the European Convention on Human Rights**. He suggested that, because the case for the Commissioners' Order was heard after many days of argument regarding the Council's Orders, the Inspector was almost bound to be influenced by what had already been heard on the Council's Orders, rather than the Commissioners' application being determined entirely on its own merits.

2.118 In response to questions from me, Mr Seymour accepted that the decision in this case would be made not by the Inspector but by the Secretary of State. He also accepted that he was not claiming that a fair decision could not possibly be made by the procedure followed, simply that it would be difficult to achieve; and that he was not saying that Article 6 had definitely been infringed, simply that it was a possibility. He accepted that the Commissioners themselves had not raised this issue in connection with their Order.

2.119 In response, the Council drew attention to the fact that the public inquiry system has been found to be inherently fair by the House of Lords in *R v SSETR ex parte Holding and Barnes plc* (the Alconbury case). The Council also made the point that any application to have the Commissioners' Order heard by a different tribunal should have been made at a much earlier stage, and that, if such an application were rejected, it should have been challenged in the courts.

2.120 The full arguments of Mr Seymour on this issue are contained at paragraphs 9 to 14 of Document S/1. The response of the Council is contained at paragraphs 11 to 13 of Document 0/3.

2.121 There were then two legal submissions made, ostensibly in support of the Commissioners' Order, but in fact by way of criticism of the Council's Orders. Both were made by Mr Charlesworth on behalf of the Bridlington Protection Group.

2.122 First, Mr Charlesworth argued that **the inclusion in the Empowerment Order of an upper age limit for the proposed Harbour and Marina Authority members would contravene Article 14** of the European Convention on Human Rights.

2.123 In response, the Council stated that justification for different treatment did not constitute discrimination contrary to Article 14 where it had an objective and reasonable justification - *Abdul Aziz v UK* (1985) 7 EHRR 471 at paragraph 72. Section 9 of the Trust Ports Review set out an objective and reasonable justification for an age limit.

2.124 The full arguments of Mr Charlesworth on this point can be found at paragraph 2.9 of Document S/2. The Council's response is at paragraphs 14 to 17 of Document 0/3.

2.125 Finally, Mr Charlesworth argued that **the effect of the Council's Orders would be to deny public access to the trust port at Bridlington in contravention of Article 17** of the European Convention.

2.126 In response, the Council stated that Article 17 was not engaged. To succeed, Mr Charlesworth would have to show that the Council, as an emanation of the State, was seeking to rely on a Convention right to justify an interference or restriction with another Convention right. The Council contended that they were not relying on a Convention right to do anything under their Orders, so the first threshold was not passed. They contended further, however, that they were not extinguishing public rights of access; that a public right of access was not a Convention right; and that no public access was being restricted to the trust port.

2.127 The full arguments of Mr Charlesworth on this point can be found at paragraph 2.8 of Document S/2. The Council's response is at paragraphs 18 and 19 of Document 0/3.

Procedural submissions

2.128 A number of procedural submissions was also made at the inquiries. I dealt with these submissions as indicated below.

2.129 The evidence of Mr Philip Parker for the Council included a three dimensional visualisation of the proposed marina (including topside works) on CD-ROM. A copy is contained within Document APP/AP28. Mr Seymour submitted that **evidence on CD-ROM should only be accepted if it was relevant and represented fact**. He argued that a visualisation did not represent fact but fiction, and that the CD-ROM should not be accepted as evidence.

2.130 In response, the Council contended that there was nothing in the Inquiries Procedure Rules which made a CD-ROM inadmissible, and there was nothing to say that such a medium could only be used to represent fact.

2.131 I ruled that the evidence contained on the CD-ROM would be admitted, and that I would consider what weight to attach to it when I had seen it, in the same way as any other evidence is evaluated. I refer to the actual evidence contained on the CD-ROM at paragraph 4.101 below.

2.132 The action taken by the Council in giving public notice, on a without prejudice basis, regarding the impact of the Works Order on beach accesses (paragraph 2.67 above) and in serving details regarding those notices on amenity organisations (paragraph 2.70 above) led to a number of additional objections and a further representation (paragraph 2.10 above). The question therefore arose as to **how these new and additional objections and the new representation could be dealt with fairly in terms of procedure and time limits during the course of the inquiries**.

2.133 I proposed that those objectors who were already objectors to the Council's Orders could either have their objections treated as additional written representations or they could deal with them when they made their objections at the inquiries. Those who were new parties to the inquiries would be asked whether they wished to make their cases at the inquiries or whether they wished to have them dealt with as written representations. Any party who wished to appear at the inquiries would be offered a time limit within which to produce a proof of evidence, with time for that proof to be considered by other parties before their appearance at the inquiries. I provided time for that proposed procedure to be considered, and challenged if necessary, but in fact it was agreed. One new objector and one new interested party appeared at the inquiries under these arrangements.

2.134 In an attempt to limit the need for attendance at the inquiries by Dr Moseley, the Listed Buildings Assessor, and by specialist expert witnesses, a **procedure for an inquiry within the inquiries regarding listed buildings** was proposed by me and accepted (subject to minor amendments) by all the parties. The agreed procedure was set down in Document X/10. In the event, illnesses affecting parties to the inquiries and expert witnesses reduced the impact of this arrangement, and it had to be revised during the inquiries (again with the full agreement of all parties) in Document X/17.

2.135 Mr Seymour made a submission relating to **the statutory extent of the listed South Pier**. In effect, this submission argued that the Old Lifeboat Slip, from the western end of the South Pier to the

beach, was an integral part of the South Pier, or, in the alternative, that it was within the curtilage of the South Pier.

2.136 The Council disputed that the slipway was fixed to the South Pier within the legal meaning of that word. They also argued that the slipway was not within the curtilage of the South Pier. Whilst the structures were close and accessible to each other, they had separate and distinct functions.

2.137 The full arguments of the parties on this submission are contained in Documents OBJ/118 to OBJ/124, OBJ/142, OBJ/181 and OBJ182, APP166, APP/199 and APP/222. During the course of the preparation of some of those papers, it transpired that some charts, deposited by the Commissioners with the County Archivist, were not available. An investigation into this was speedily carried out by Mr John Ginnever, the Council's Director of Education, Leisure and Libraries, which led to the preparation of Document APP/123, following which the matter was not raised with me again.

2.138 The submissions regarding the Old Lifeboat Slip are considered in detail by Dr Moseley, the Listed Buildings Assessor, in Part 4 of her report (Appendix C), in particular at paragraphs 4.13 to 4.31. Her firm conclusion, with which I agree, is that the Old Lifeboat Slip is an ancillary structure, fixed to and forming part of the listed South Pier, and therefore part of the listed structure.

2.139 The Royal Yorkshire Yacht Club ("the RYYC") appeared, through Counsel, as a supporter of the Council's Orders. Their Counsel attended the inquiries only on the days when they considered this to be necessary. They were granted a fixture to present their case in support of the Council. Dates were also agreed on which they would have the opportunity to cross examine specific witnesses for the Commissioners.

2.140 Counsel for the RYYC attended the inquiries on 19 February 2002 to cross examine Mr Brian Rodgers, a witness for the Commissioners. Mr Rodgers had read his summary proof of evidence (Document OBJ/SP2) comprising two and a half pages on the inquiries' previous sitting day. Along with his full proof (Document OBJ/P1), this had been available to all parties since 11 September 2001.

2.141 **Counsel for the RYYC complained that Mr Rodgers had been allowed to read his evidence in chief when she was not present**, although it had been known that she wished to cross examine him. I reminded the inquiries that it had been made clear at the Pre Inquiries Meeting and at the opening of the inquiries that (apart from any fixtures agreed) the programme set for the inquiries would only be indicative, and that it would be subject to change as necessary to achieve progress. It was the responsibility of the parties to ensure that they were present for any part of the inquiries that they wished to observe.

2.142 Given that it had taken only 15 minutes for Mr Rodgers to read his proof on 15 February, I offered to allow him to read it again on 19 February in the presence of Counsel for the RYYC. This offer was declined, on the basis that Counsel for the RYYC considered that hearing the evidence twice would unduly influence me as to its importance.

2.143 It was eventually agreed that I would read out to the inquiries my note of the amendments which Mr Rodgers had made to his summary proof when he read it to the inquiries on 15 February. These comprised the correction of four typographical errors and the addition of two short points. All are reflected in my report of the case put for the Commissioners in the balance of this report. I refer to this exchange only because I was specifically requested to record this procedural complaint in my report.

2.144 **Three objectors** (the Bridlington Protection Group, Mr Bolton and the Commissioners) **sought leave** during the inquiries under Rule 15(8) of the Inquiries Procedure Rules **to amend their statements of case following the withdrawal of the objection by Yorkshire Water Services Ltd** ("Yorkshire Water") on 26 June 2002. In essence, although Yorkshire Water, as the statutory undertaker, had, by the withdrawal of their objection, expressed themselves satisfied with the arrangements offered by the Council to safeguard Yorkshire Water's equipment if the development proposed by the Council proceeded, the three objectors wished to challenge this. They also wished to

question the Council on the availability of funds to cover the additional potential financial liability which the Council had taken on in the arrangements it had made with Yorkshire Water.

2.145 The Council objected to these applications. As regards the operational issues, these were clear from Yorkshire Water's statement of case from the outset, and could have taken nobody by surprise. No other party had previously raised them at any stage. Two of the objectors now wishing to raise them had already closed their cases, and all three of them had concluded their evidence. As regards the contingent financial liability undertaken by the Council, the risk would be small, and the finances of the Council would be sufficient to cover it.

2.146 In support of the applications to amend statements of case, Mr Seymour raised a further point. He argued that, under the Human Rights Act 1998, the public had a legitimate expectation that evidence which had come to the notice of the inquiries would be taken into account. If the legitimate expectations of objectors were not fulfilled, their right to a fair hearing would be prejudiced.

2.147 In response, the Council argued that *Bryan v UK* 21 EHRR 342 established that the inquiry system provided a fair hearing. That system provided for issues to be heard, but heard within the system. The system did not provide for the hearing of objections which had been withdrawn, and the position of statutory undertakers was no different in that respect from the position of any other objector.

2.148 I ruled that it was not necessary for the purposes of the inquiries for the objectors' statements of case to be amended or for their cases to be reopened in connection with the operational issues. By the withdrawal of their objection, Yorkshire Water, the statutory undertaker, had made clear their satisfaction on these points. As regards the financial implications of the arrangements between the Council and Yorkshire Water, however, this was a matter on which I would in any event have been asking the Council to provide additional information. In those circumstances, I ruled that I would allow the three objectors concerned to amend their statements of case and to reopen their cases to cover the issue of the potential financial consequences for the Council of the agreement which they had concluded with Yorkshire Water. This could not have been anticipated by objectors as an issue in advance of the details of that agreement becoming public on 24 June 2002.

2.149 In the light of that ruling, the Council agreed to call further evidence on the issue of the contingent financial liability they had accepted.

2.150 The full text of my written ruling on these issues and the reasoning supporting it is contained in Document X/18.

2.151 The Bridlington Protection Group also sought leave to reopen their case on the 57th day of the inquiries to cross examine a Council witness on the drainage of the South Pier. The objectors claimed that an agreed statement between the Council and the Commissioners, put in on the 56th day of the inquiries, (Document APP/239) made it clear for the first time that the Council accepted that drainage of the South Pier to manage water pressures would be necessary. The Council objected to this application on the basis that the Bridlington Protection Group had closed their case.

2.152 I ruled that the objectors would not be allowed to reopen their case. The issue could have been raised with the Council's witnesses when the objectors had cross examined them previously, as it had been by other objectors.

2.153 Towards the end of the sitting of the inquiries on 10 July 2002, at the conclusion of the Council's rebuttal evidence on Mr Terrell's objection dealing with the alleged adverse impact of the Council's proposed development on the coastal sedimentation processes in Bridlington Bay, Professor Pritchard, the Environmental Assessor, asked for details of the SWAN computer process by which the Council's witness had assessed that impact. This was produced by the Council in Document APP/256 at 2.30pm on the following day, 11 July 2002. Mr Terrell had closed his objection at 1.20pm on 11 July.

2.154 On 12 July 2002, Mr Terrell, having studied Document APP/256 overnight, raised a question in the inquiries as to the competence of the Council's expert witness in using the SWAN computer model. He claimed that this also cast doubt on the interpretation on behalf of the Council of the Coastal Engineering Research Center (USA) sedimentary transport formula and the UNIBEST-LT model. **Mr Terrell submitted that the inquiries should have the benefit of the reinterpretation of the computer models by a professionally competent team of academic engineers.** I asked him to reduce his criticisms and suggestion to writing. This was done, and presented to the inquiries as Document OBJ/223 on 17 July 2002, in effect one sitting day before the inquiries were due to adjourn.

2.155 Having considered OBJ/223, I suggested that a paper should be produced on behalf of the Council in response during the adjournment, no later than 15 August 2002. I would then ask Professor Pritchard (who had first raised the issue of the SWAN process) whether he felt that he or I needed any further independent advice before I would be in a position properly to advise the Secretaries of State. Both Mr Terrell and the Council agreed to this procedure.

2.156 A response was received from the Council within the agreed timeframe during the August/September adjournment (Document APP/263), and that prompted a further letter from Mr Terrell (Document OBJ/224).

2.157 These papers were put to Professor Pritchard during the adjournment. He advised me that he did not consider that any further evidence or opinion was required on this issue before proper advice could be prepared for the Secretaries of State. Having considered his views, I accepted them, and notified the parties through the Programme Officer during the adjournment. I mentioned this conclusion when the inquiries resumed on 4 October 2002. No party raised any objection to the conclusion reached.

The format of the report

2.158 This report contains a brief description of the site affected by the Orders and its surroundings, the gist of the cases presented and my conclusions and recommendations. A list of those appearing at the inquiries is at Appendix A, and a list of documents submitted to the inquiries is at Appendix B. The following prefixes denote the source of each document:

on the Council's Orders

ERYC - all deposit documents submitted by the applicants with their statement of case

APP - all other documents submitted by the applicants

OBJ - all documents submitted by the objectors

SUP - all documents submitted by supporters

REP - all representations

INTP - all documents submitted by interested parties

X - documents from any other source

On the Commissioners' Order

BPHC - all deposit documents submitted by the applicants with their statement of case

A - all other documents submitted by the applicants

O - all documents submitted by objectors

S - all documents submitted by supporters

R - all representations

IP - all documents submitted by interested parties

Y - documents from any other source.

The suffix P indicates a proof of evidence, SP a summary proof, RP a rebuttal proof, and AP an appendix to a proof. Given the length of the inquiries and the fact that all parties did not attend throughout, for the convenience of the parties proofs of evidence were included in the inquiries library as inquiry documents. They are therefore included in this list of documents. My report takes account not just of the evidence as outlined in the proofs, however, but of the evidence as given at the inquiries, together with points brought out in cross examination.

2.159 As indicated above, the report of the Listed Building Assessor comprises Appendix C, the report of the Environmental Assessor is at Appendix D, and a list of the various submissions made by Mr Seymour with a note of where each of them has been addressed in this report is at Appendix E.

2.160 In the light of the full coverage given in the reports of the Assessors to the cases of the parties on the listed building and on the environmental issues, I report only briefly on these aspects of the cases. In my conclusions on these matters, however, I have regard to all the evidence provided and the submissions made at the inquiries regarding these issues, together with the recommendations of the Assessors.

2.161 During the inquiries, the opportunity was taken to discuss with the parties the conditions which might be imposed on any deemed planning permission and on any listed building consents. This discussion took place on a without prejudice basis so far as the objectors were concerned. Should the Secretary of State decide to grant deemed planning permission, the conditions which I would recommend should be imposed are set out in Appendix F to this report. If the Secretary of State were to decide to grant listed building consents, the conditions which I would recommend for inclusion in such consents are set out in Appendix G to this report.

3. The site and its surroundings

3.1 Bridlington is a seaside resort which lies on Yorkshire's North Sea coast, some 60 kilometres north of the estuary of the River Humber, and around 7.5 kilometres south of the cliffs and promontory of Flamborough Head. With a year round population of about 34,000, it is the largest town between the Humber Estuary to the south and Scarborough to the north. Inland, it is backed by the rolling Yorkshire Wolds, which are largely given over to agriculture.

3.2 The beaches and harbour of Bridlington are sheltered from weather from the north by Flamborough Head, a headland terminating in 30 metres high cliffs, which juts into the North Sea for some 7 kilometres to the east of the longitude of Bridlington, creating the effect of a protective bay for Bridlington when the weather is from the north and the north east.

3.3 **The coastline of the bay** runs from the chalk cliffs of Flamborough Head, through a section of clay cliffs between Flamborough and Sewerby, a village 2.25 kilometres north east of Bridlington, to the mainly sandy shore from Sewerby, through Bridlington and Wilsthorpe to Fraisthorpe Sands, which lie some 4.5 kilometres south of Bridlington.

3.4 **Bridlington's sea front promenades** run for almost a kilometre to the north of the harbour and for approximately 1.6 kilometres to the south of the harbour. They have been repaved and refurbished in recent years, winning architectural awards for the quality of the conception and the work.

3.5 **On the sea front to the north of the harbour**, there is a small amusement park together with an extensive restaurant backed by retail and commercial properties. Leisure World, a swimming pool dating from the early 1960s and a theatre dating from the 1930s, underwent a major refurbishment in 1988, to provide a wave pool and general activities hall (used, for example, for indoor bowling) together with a night club. To the landward side of the promenade, there are hotels and residential properties on the west of Alexandra Parade and North Marine Drive. They overlook a sandy beach, but one on which more stones and pebbles appear than are present on the beach to the south of the harbour.

3.6 **On the south side of the harbour**, the Spa Hall and Theatre overlook the first section of promenade and beach. Built according to its date stone in 1907 (though evidence produced at the inquiries suggests it was open to the public a few years earlier than that), parts of the **Spa complex** are of one, two and three storeys. Externally, the Spa is in clear need of repair and maintenance. Internally, the main public rooms are in reasonably good order, but it is apparent that some modernisation and reordering is necessary to improve the appeal of the complex to conference organisers.

3.7 The Spa provides a 1,000 seat proscenium arch theatre, together with a hall which can seat 2,000 at floor level, or 3,300 if both the floor and the balcony are used. It lacks sufficient quality break out rooms for major conferences; there are presently only two of any size at balcony level, with two further rooms at the level above the balcony.

3.8 The beach in front of the Spa appears to remain wet at all states of the tide, because of a number of freshwater springs which run on to the beach in this area.

3.9 Immediately to the south of the Spa buildings, there is a boating pool. Across the promenade in front of the boating pool, there is a set of steps giving access down to the beach. Some 170 metres further south, another stepped access to the beach is provided.

3.10 **The Lifeboat Station** for the off shore lifeboat is located to the rear of the Spa, across South Marine Drive. Access to the beach to launch the lifeboat is gained from a slipway off South Marine Drive some 160 metres south of the Lifeboat Station. This slipway is in two sections, running first from South Marine Drive to the landward side of the promenade, and then from the sea side of the promenade to the beach. Both sections of the slipway would be within the area potentially affected by the Council's proposed development.

3.11 Moving further south, to the landward side of the promenade, there are retail units serving the beach area, the Lifeboat Station for the inshore lifeboat, children's amusements and beach huts. The beach in front of this section of the promenade is dry and pebble free when the tide is out. It appears to be kept clean throughout the year. At irregular intervals along this stretch of the promenade, steps or slipway access points to the beach are provided from time to time.

3.12 Landward of the promenade, **South Marine Drive**, as it proceeds to the south, continues to rise gently, so that 500 metres or so south of the harbour the road lies about 6 metres higher than the level of the promenade, with a grassed and landscaped slope between the eastern side of the footpath of South Marine Drive and the promenade. There are hotels and residential properties of various types behind the western footpath of South Marine Drive, with clear views out to sea and towards the harbour, which is viewed from this position against the background of Flamborough Head.

3.13 The carriageway of South Marine Drive varies in width from around 9.2 metres to 9.85 metres. At present, parking is allowed on both sides of the carriageway along much of its length. When this is the case, the remaining carriageway width between the marked parking bays was measured by the parties on site at 5.25 metres.

3.14 Some 750 metres south of the harbour, Yorkshire Water have a **sewage treatment works** on the landward side of the promenade. From this works there are two outfalls: one continuously discharges treated effluent about 1.7 kilometres out to sea; the other is a storm outfall, which operates only at periods of particularly heavy rainfall, discharging fine screened storm water at or near the level of Mean Low Water Springs.

3.15 Just beyond the southern end of the promenade is the **Belvedere Boat Storage Area**, from which it is possible to launch boats without keels across the beach at any state of the tide, whenever a tractor is available.

3.16 Moving further south, some 2.5 kilometres from Bridlington Harbour is the small settlement of **Wilsthorpe** on the cliffs above the beach, with its few houses, farms and caravan sites. At Wilsthorpe, small pebbles of coal can still regularly be seen on the beach, thought to be swept ashore from the many colliers which over the years have foundered in the seas off Bridlington. Exhibit OBJ/166 contains larger than usual pieces of this coal, gathered by one of the objectors between Wilsthorpe and Bridlington.

3.17 Some 1.6 kilometres further south again are the **Auburn Sands** where the Auburn Drain, a small rivulet which is partly canalised just inland, runs into the sea.

3.18 There are Second World War pill boxes at Wilsthorpe and at Auburn. The positions of the pill box and tank traps at Wilsthorpe suggest that no erosion has taken place there since the defences were constructed in 1941; but the position of the pill box at Auburn appears to suggest that the coast there has been affected by erosion.

3.19 About 1.3 kilometres inland from Wilsthorpe, and some 3.5 kilometres south west of Bridlington Harbour is an area of land at **Carnaby** in relation to which planning permission has been given for the creation of a 1,700 space **park and ride scheme** to aid the parking provision within Bridlington. The site is owned by the Council. It is presently in agricultural use.

3.20 **The harbour at Bridlington** has grown up around a small south facing indent in the coastline, where the **Gypsy Race**, a small stream, discharges into the sea. A sandy bar, known as **the Canch**, forms close to the entrance to the harbour, due in part to the effect of the Gypsy Race, and the entrance is periodically dredged.

3.21 There is a much larger sand bar, located some 4 to 4.5 kilometres offshore, known as the **Smithic Bank**. This affords a degree of shelter to Bridlington Bay from the east and south east.

3.22 The harbour is protected by the North Pier on its eastern side and the South Pier on its southern side. The entrance to the enclosed tidal basin is located in the south eastern corner between the rounded heads of the two piers. Vessels berth against the inner face of the South Pier, on moorings

within the harbour, or in the case of fin keeled yachts, in wooden cradles approachable at half tide. Part way along the South Pier, there is provision for fuelling vessels and, further along towards the seaward end, an ice house for fish storage and preparation for transport.

3.23 Facilities for lifting out and maintaining vessels are located on a platform recently built over an inlet known as **Clough Hole**, where the culverted Gypsy Race enters the harbour in the north western corner. The platform is also used as a pay and display car park. A timber jetty, known as **the Chicken Run**, used by smaller fishing boats divides the harbour into a northern and a southern section. There is another timber jetty used by pleasure boats at **Crane Wharf** in the north eastern corner of the harbour.

3.24 The mean spring tide range at the harbour mouth is 5 metres. The mean neap tide range is 2.4 metres. At high water mean spring tides, there are approximately 6.1 metres of water at the harbour mouth, and at mean neap high tides approximately 4.7 metres of water.

3.25 Much of the harbour dries during spring tides, when there is often less than 1 metre of water at the harbour mouth at low water. At mean low water neap tides, there are a little over 2 metres of water at the harbour mouth.

3.26 **Harbour Road** runs from the root of the North Pier to Clough Hole. It has shops mainly serving the tourist trade at ground floor (harbour wall) level, with residential properties, some for seasonal letting, above them.

3.27 The western end of the harbour, between Clough Hole and the root of the South Pier, is known as **Gummers Wharf**. The offices of the Commissioners, a pay and display parking area and **the Lawrence Complex**, a modern development which includes a restaurant, a small hotel and shops are located there. At the south west corner of Gummers Wharf there is a slipway to the harbour which can be used for minor repairs and maintenance of vessels which can be dragged out of the water.

3.28 Immediately to the north of the root of the South Pier, there is a substantial shelter, **the Grotto**, apparently built in 1903 and recently refurbished, in which it is possible to sit to view the activity at this end of the harbour. Steps lead down to the Grotto and to the harbour apron from South Cliff Road above.

3.29 Immediately to the south of the root of the Pier is the Old Lifeboat Slip, which leads down to the beach.

3.30 In a commanding position overlooking South Cliff Road and the harbour are **the present premises of the RYYC**. They take up a triangular shaped site at the junction of Windsor Crescent and West Street.

3.31 The most dominant building overlooking the harbour is the ten storey **Ebor Flats**, which are set back from South Cliff Road behind a small park area. This block of flats is the tallest building in the centre of Bridlington by some margin.

3.32 Until the beginning of the nineteenth century, the harbour area of Bridlington was detached from the main inland part of the town; but **the commercial centre of the town** has since shifted, so that it now lies immediately to the north of the harbour in the area once known as Bridlington Quay. The historic Old Town with its 17th century high street and the 11th century Bridlington Priory lies some 1.25 kilometres north west of the harbour.

3.33 Bridlington has a reasonable balance of shopping provision in its town centre, with a higher than average provision of restaurants, cafes, amusement centres and gift shops, as is to be expected in a town which relies heavily on tourism. Vacancy rates were around average at roughly 10% at the time of my site visit, and were reasonably distributed throughout the centre, although there was a slightly higher concentration along the western end of Bridge Street and along Hilderthorpe Road.

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3.34 The Promenades shopping centre is off Princess Street, just next to the new bus station. Opened in 1995, the Promenades is a light, airy, single storey covered centre, containing about 30 retail units. At the time of my site visit, six units were not trading.

3.35 The relationship of the harbour to Bridlington, and of the town to its agricultural hinterland is well shown on Document OBJ/210. It also shows the relationship of the RYYC premises and the Ebor Flats to the harbour. It should be borne in mind, however, that this photograph was taken in 1977, before Clough Hole was filled and before more recent developments on Gummers Wharf were completed.

4. The case for the council's orders

The material points are:

4.1 The three Orders sought by the Council have a common objective - laying the foundations for the regeneration of Bridlington.

The need for change in Bridlington

4.2 Although there has been a settlement and a harbour at Bridlington for many centuries, the development of the modern town and resort commenced in the mid 19th Century, following the opening of the railway from Hull. By the middle of the 20th Century, resorts accounted for 75% of all main holidays in England, and Bridlington, with its main catchment areas of West and South Yorkshire and the East Midlands experiencing virtually full employment, was well placed to take advantage of the trend.

4.3 Since the 1970's, however, English seaside tourism has reduced significantly as the overseas package holiday has become more popular. In the last 25 years, seaside tourism nights in England have fallen from 193 million per year to 104 million per year. In the early 1970's, English seaside nights represented around 27% of all UK tourism nights; by 1998, the share had fallen to 13%.

4.4 Bridlington has also suffered from the decline of heavy industry in its main catchment areas. This has resulted in a reduction in the price of tourist facilities in Bridlington, falls in product quality, lower profitability and lack of investment even for refurbishment, as providers have tried to hold on to as much as possible of the available market.

4.5 Former holiday accommodation has been converted to houses in multiple occupation or bed and breakfast hotels. Large scale inward migration to take up these facilities, often by young people on benefit, has given rise to high levels of unemployment and social problems in the town.

4.6 One consequence of such a negative cycle is a further detrimental impact on the quality of the Bridlington experience for visitors, thereby leading to further market downturns.

4.7 A Destination Benchmarking Survey for Bridlington, carried out in 2000 (Document ERYC 14), indicates that the typical visitor to Bridlington is aged over 55 and spends £14 per person per night on accommodation plus £4.17 per person per day on eating and drinking.

4.8 Bridlington's economic structure is, however, dominated by the tourism industry. It accounts for 34.8% of the jobs in the town. Tourism employment is often low skill, low wage and seasonal, with many jobs being offered only on a part time basis. The other major Bridlington employment sector of public administration, education and health has also suffered a loss of almost 10% of employment numbers during the 1990s.

4.9 At the same time, employment opportunities in the fishing industry have reduced. In the two years from 1998 to 2000, the number of trawlers based at Bridlington fell from 16 to 8, with a net reduction in employment of about 30 people. The fishing industry now supports just under 100 full time equivalent jobs in Bridlington. The reduction in traditional fishing was the largest fall at any port in the North East Sea Fisheries District. Although there has been a positive response to the decline by increases in shell fishing, this is a very competitive industry, and improvements to the facilities provided at Bridlington are necessary to retain the remaining fleet.

4.10 Bridlington's coastal location at the far north eastern edge of the East Riding of Yorkshire makes it difficult to attract new manufacturing industry to the area. The town is 75 kilometres from the motorway system (M62), and 96 kilometres from the A1. The connecting route to each is provided by a mainly single carriageway country road. Bridlington has no facilities to handle sea borne freight, and, although the town retains its rail link, there is no existing rail freight facility.

4.11 As a result of the interplay of these factors, in January 2001, unemployment in Bridlington (at 8.76%) was more than double the national level (3.85%). In the electoral wards closest to the proposed marina development, unemployment in January 2001 was 13.98% and 10.72%. Moreover, the gap between Bridlington and the rest of the country is widening, in that Bridlington's unemployment was 1.781 times the Great Britain average in January 1997, but it was 2.276 times the national average by January 2001.

4.12 Vocational skills in Bridlington are lower than the national average, and the low wage, low skill nature of much of the work which is available translates into a culture of low aspiration. In the Index of Multiple Deprivation 2000, Bridlington South ward is ranked within the worst 11% of wards nationally, while Bridlington Old Town is within the worst 16%.

4.13 The cost to the public purse of alleviating the socio-economic problems of Bridlington is substantial. During 2000, a total of £25.8m was paid to residents of Bridlington in just four forms of assistance - Council Tax Benefit, Housing Benefit, Income Support payments and Job Seeker's Allowance.

4.14 In an attempt to address these problems, the Bridlington Regeneration Partnership (BRP) was set up in 1995. It is made up of around 40 local organisations - employers, voluntary groups, the local authority, education and training interests and regional economic groups. It includes the Commissioners. It has sought to build on the strengths of Bridlington, and to target specific niche markets. To that end, the Partnership has undertaken a number of major capital schemes since 1995, either collectively or through individual partners. They include a £2.5m improvement to the North Promenade, a £4.5m improvement to the South Promenade, a town centre closed circuit television scheme, "Beside the Seaside" (a £1m new visitor attraction), and a £2m scheme to improve landside visitor facilities at Bridlington Harbour.

4.15 The BRP also secured in 1997 a grant of £2.74m from the Government's Single Regeneration Budget (SRB) to improve the physical environment of the centre of Bridlington, establish programmes to improve the availability of and access to voluntary, community health and other services, to develop and improve the tourism product, and to create and develop the infrastructure to stimulate the growth of small firms.

4.16 The SRB scheme is on target to meet all the outputs it was required to deliver by 2002; but, for example, the 190 jobs it set out to safeguard or create over a period of 5 years need to be seen in the context of the 200 jobs recently lost at a stroke as a result of redundancies at Bridlington's major private sector employer.

4.17 It is clear that incremental change is not sufficient to achieve overall economic growth. It merely slows the rate of decline. What is needed in Bridlington is an initiative which will make a step change in the socio-economic position of the town, and kick start the move from slow decline to regeneration. This is what the marina and associated development is designed to achieve.

4.18 The level of deprivation in Bridlington has been recognised by the European Union with the designation under Objective 2 of the European Structural Funds of Bridlington and the surrounding coastal parishes. The Objective 2 area covers a total of 43,629 of the East Riding of Yorkshire Council's population (318,938), some 34,000 of them resident in the town of Bridlington itself.

The plan for a marina and associated development

4.19 For almost 30 years, both private developers and public authorities have tried to develop a marina at Bridlington as a means of uplifting the economy and the image of the town. The history of these various attempts is outlined in Document APP/75.

4.20 In 1996, the BRP raised with the Council (which had then just taken over local government responsibilities in the area) the prospect of a marina development. Feasibility studies were undertaken, which encouraged the BRP to pursue the prospect further. By September 1998, it was clear that the project was developing a scale and complexity which was beyond the resources of the

BRP as a local voluntary partnership. The Council was therefore asked, and agreed, to take a more direct role in progressing the project. That is why the Orders before the inquiries are promoted in the Council's name. The BRP has, however, continued to work closely with the Council on the project.

4.21 In the light of the potential availability of Objective 2 funding, an integrated development plan has been submitted seeking assistance for

- construction of a 500 berth marina with adjoining fishing harbour
- reclamation of 14.7 hectares of land for the provision of high quality residential, commercial, leisure and retail development (by 'reclamation' the Council means creating a platform for future development)
- refurbishment of Bridlington Spa as a major conference facility
- construction of a new hotel
- provision of modern facilities for the commercial fishing fleet and for recreational activities
- a marketing analysis designed to identify new niche market areas for tourism
- identification of the skills required to enable local people to be trained to take up employment opportunities which would arise from the construction and operation of the marina and related facilities
- development of marina support services and facilities at Carnaby Industrial Estate.

4.22 The regeneration of Bridlington by this initiative is in line with the regional economic strategy of Yorkshire Forward, the Regional Development Agency. This has as one of its strategic aims the realisation of the potential of tourism industries. It is also recognised in the Sub-Regional Action Plan, which makes specific mention of the Yorkshire Marina at Bridlington as a key strategic project (Document ERYC 17, page 10).

4.23 Not surprisingly, the proposed marina and associated development would make a significant contribution to the delivery of the Council's Economic Development Strategy. It would also contribute directly to the Bridlington Regeneration Strategy developed by the BRP.

4.24 That Strategy comprises a series of measures designed to deliver the full economic potential of the marina. They include:

- the creation of a new visitor focus for the town, differentiating it from its competitors, adding visual interest, and strengthening its retail, catering and other visitor infrastructure because of its direct link to the town centre
- the attraction of higher spending, longer staying visitors from a sector of the leisure market growing at around 4% per year, namely yacht and boat owners
- an increase in the number and variety of sailing regattas and marina/water based events of various kinds
- associated investment in Bridlington Spa to improve its quality and to upgrade its facilities to attract additional and more substantial conferences and events to the town throughout the year
- the improvement of facilities and services for fishing businesses, including better storage and access arrangements.

4.25 Through a Local Development and Employment Pact for Bridlington, local people would be equipped with the skills they would need to enable them to compete for the new job opportunities generated by the marina. A similar approach is already being taken through the East Riding College, the Job Centre and Bridlington schools to ensure that local people benefit from the investment in the town currently being undertaken through the Government's Private Finance Initiative.

4.26 There are several examples in the UK of the long term economic and physical regeneration benefits that marina development can bring. The marinas at Margate and Ramsgate in Kent and Hartlepool and Hull on the east coast demonstrate how public sector led leisure investment can attract complementary commercial investment, rejuvenating and extending the appeal of waterside destinations. Hartlepool, in particular, shows how a positive image change can be achieved for an area through the creation of a marina.

4.27 The most recent comprehensive survey of trends in sailing and other water sports is produced by the British Marine Industries Federation (Document ERYC 67). It indicates that boat owners and participants in water sports use their boats on average for ten week ends in the season, plus one week's holiday use, but use is growing as a result of shared ownership, corporate ownership and chartering. Some ports along the north east coast have a sailing programme from the end of March to the end of October, with a winter programme for dinghies.

4.28 The survey states that the average local spend by an owner for the season is £2,870, excluding marina fees, insurance and any major replacement or refit. The average crew size is four people, with an average spend per person per day of between £20 and £40 for crew members, extended to £88 per person per day for foreign visitors.

4.29 Research demonstrates that there is an unmet market demand for a new marina. Sailing opportunities on the east coast generally, and on the Yorkshire coast particularly, are limited. There is a gap in marina facilities for day sailors between Hull and Hartlepool, and an increasing demand for higher quality and more extensive marina facilities on the part of leisure boat owners. While it would take more than a day to sail from Bridlington to either Hull or Hartlepool, the relatively safe and attractive waters of Bridlington Bay, which are largely unaffected by the high levels of commercial shipping that pose a recognised danger in the Humber Estuary, would appeal to an expanding local and regional market, and the proposed marina would be likely to attract visiting boats from elsewhere in the UK and neighbouring European countries. It is accepted that other east coast marinas are not full, but nor do all of them provide the range of facilities that people expect, and which would be created at Bridlington.

4.30 The growth in sailing as a leisure activity is not limited to the south east and to the south of England. Whilst sea temperature is marginally cooler off Flamborough Head than in the Solent, the difference is only 2 degrees Celsius in summer and 1.5 degrees in the winter (Document APP/133). This would not be enough to affect significantly the popularity of Bridlington marina. Air temperature is not significantly different.

4.31 The UK's leading marina development and operating companies believe that there is a strong market for a new 500 berth marina and associated facilities at Bridlington. As well as being supported by a market assessment of existing provision, 500 berths is the optimum number for the efficient operation of a modern marina, and for construction at a reasonable capital cost.

4.32 With a start on marina construction in 2005, full occupancy of the marina could be anticipated by 2014 if the use built up in line with the pattern and pace experienced at other major UK marinas. A slightly faster take up could be achieved if the growth of interest in yachting and the increase in leisure spending continue at present rates, supported by a high profile marketing and promotion campaign for the marina at Bridlington.

4.33 The proposed addition of commercial components, such as high quality waterside housing, is seen as a major advantage of the proposed scheme by local, regional and national developers and property agents. While developers have little current interest in the Bridlington area for commercial development, there is genuine interest in investment in retail, office and leisure provision associated with the marina, as well as the proposed housing element. Moreover, by investing in the Spa, adjacent to the proposed marina, the opportunity to attract staying visitors throughout the year would provide the commercial justification for expansion and improvement in the hotel sector. The Spa is one of the UK's larger seaside conference venues. The conference trade is already important to Bridlington, as can be seen from Document SUP/5. But the existing condition and facilities at the

Spa, and the lack of an acceptable conference hotel for larger conferences, means that potential further conference trade is lost (Document APP/119). With investment in the fabric of the building and its facilities, improved hotel provision with at least one larger and higher grade hotel, and additional marketing and promotion reflecting the new attractions of Bridlington, there would be scope for the town to broaden its visitor base and to extend the visitor season, particularly in relation to conference business.

4.34 The combined impact of the creation of the marina, the refurbishment of the Spa, and the development of new residential and commercial property in a waterside setting would have an extremely positive impact on the image of Bridlington with investors, events planners and visitors alike. The impact of the whole package of proposals would be much greater than that of any one of them taken singly. Investment on that scale has never happened in Bridlington before. It would send a very positive message to investors and to visitors that things were changing in the town.

4.35 Normally, the landside development area at a marina is roughly equal to the wet side area of the marina. It is accepted that a larger landside development area is being proposed here. That is because of the need for space for additional facilities required to create the critical mass necessary to achieve the benefits desired for Bridlington. It is accepted that there are currently vacant offices in Bridlington, but they are first floor offices, not purpose built offices such as would be created in the marina. The number of shops vacant in the town centre represents only a normal vacancy level for a town such as Bridlington. Additional retail provision at the north western end of the marina site would represent an edge of centre extension to the existing town centre facilities. It would effectively become part of the town centre in functional terms, shifting the existing centre of gravity of the town centre towards the harbour.

The potential economic impact of the marina and associated development

4.36 An economic impact assessment of the whole of the marina and associated landside development proposed (Document ERYC 65) indicates that some 44 full time equivalent jobs would be created locally during the construction phase. In addition, a gross total of 622 permanent full time equivalent jobs would be created by the development. This figure includes direct jobs which would be created by the operation of the new facilities, indirect jobs created by the supply of goods and services to those facilities or through local spending from the wages and salaries of those directly employed, and induced jobs which would arise from the impact which the new investment would have in demonstrating confidence and attracting new activity and spending to Bridlington. The net figure of permanent full time equivalent jobs created would be 460, after allowing for any displacement of existing jobs. These jobs would be created across the whole range of the pay spectrum. They would create additional spending to inject into the local economy of £7.9m per year. Bridlington is an area of relatively low pay, where any salary above £11,000 per year is regarded as reasonably high.

4.37 The figures for permanent full time equivalent jobs have regard to the temporary nature of construction jobs (which have therefore been reduced by a ratio of 10:1 in accordance with HM Treasury advice) and to research on the impact of employment multipliers in the tourism sector (Documents ERYC 68 and ERYC 83).

4.38 The economic impact of increased visitors would also be significant. An anticipated increase of 62,000 visitor nights per year and an extra 118,400 day visitors would bring an extra £8.2m per year into the local economy.

4.39 Alternative options considered as part of the economic impact assessment included:

- a do nothing option
- a do minimum option
- a smaller scale marina option and
- a marina only option.

4.40 Doing nothing would not result in Bridlington maintaining its present position. It would lead to a further decline in the town's tourism economy. Doing the minimum might be limited to investment in the Spa. Whilst this could provide a total of 120 full time equivalent jobs, it would not produce the same overall benefits or visitor numbers, and would not boost the image and appeal of the town to the same extent. It would cost just the same to refurbish the Spa alone as it would if the refurbishment were part of an overall scheme, but it would be much harder to justify, because the return from the investment would be so much less. The scale and scope of the works to create a marina are largely fixed, so a smaller marina would result in an increased investment cost per berth. The range and size of supporting facilities would also be smaller, with overall job creation benefits being reduced by between 15% and 20%. Any extension to the number of berths at a later date would also be achieved only at a considerably increased cost per berth. Finally, a stand alone marina, without the associated landside development, would have limited short term employment benefits, and would not have the same catalytic effect on the long term regeneration of Bridlington.

4.41 The economic impact assessment was carried out by an organisation of international repute, independent of the Council, and chosen by the Council after a competitive tendering procedure.

The design of the proposed works

Determination of the marina location and footprint

4.42 The BRP considered that previous proposals for a marina prepared for the Commissioners in 1982 (Document BPHC 22) and 1984 (Document ERYC 115) should be the starting point for the new marina feasibility study. Both these reports suggest the construction of a marina in the same location as that proposed in the Works Order and indicate a new south breakwater in a position similar to that currently proposed.

4.43 A site immediately to the north of the existing harbour was discounted because of its greater proximity to the Flamborough Head candidate Special Area of Conservation (cSAC), with increased risk of a detrimental effect on its environmentally important features.

4.44 Sites more remote from the existing harbour to either the north or the south were discounted because they would not offer the opportunity to take advantage of the existing harbour facilities and structures. Nor would it be possible for such a marina to be operated jointly with the harbour. Thus, both construction and operating costs would be higher, and there would be potential for the facilities to compete rather than to complement each other. A location remote from the centre of Bridlington would also not produce the benefits sought of regenerating the town centre.

4.45 Discussions with existing harbour users including the Bridlington and Flamborough Fishermen's Society, the RYYC, representatives of other berth holders and the Harbour Master on behalf of the Commissioners identified the following points as matters to be addressed in the design of the proposed works:

- the narrow entrance to the existing harbour (27 metres) makes entry hazardous during stormy weather
- the seabed level in the existing entrance is such that there is no water at the lowest tides
- the need for shelter for the entrance from the predominant wave directions in order to improve ease and safety of access to the harbour.

4.46 These points would be addressed by designing a 120 metres wide entrance to the proposed outer harbour, with a minimum clear channel width in the outer harbour of 74 metres, as shown on Document APP/146. There would be an improved depth of 2 metres of water at the bottom of mean spring tides. Allowing a safety margin of 0.5 metre of water below the keel, a fishing boat with a draught of 3 metres would be able to gain access to the existing harbour for 49% of the time, and a smaller boat with a draught of 1.5 metres for 89% of the time. With the same safety allowance, the fishing boat could expect to gain entry to the new outer harbour for 89% of the time, and the smaller

boat for 99% of the time. The outer harbour would provide berthing for fishing boats and other vessels waiting on the tide to enter the existing harbour. Bridlington would thus become a 24 hour access port for most boats during most of the year. A boat which could not gain entry to the outer harbour under these proposals would not be able to get to within 200 metres of the existing harbour at present.

4.47 The design would provide a sea bed level of 1.5 metres below Chart Datum. The Commissioners had originally requested a bed level of 2 metres below Chart Datum at the new entrance, so that fishing vessels would not ground in the entrance at the bottom of any tide. Such a level would, however, require the breakwaters to extend approximately 200 metres further seaward at an additional cost of several million pounds. The breakwaters would then have more influence on the coastal process regime, and the size of the waves in the deeper water would require a more expensive form of construction. The compromise accepted would, however, increase the proportion of the tide during which fishing boats could expect to gain entry to sheltered water by about 80%. For the smaller vessels, almost constant access to sheltered water could be expected.

4.48 Through consideration of the local bathymetry and wave climate, the most suitable location and orientation of the new entrance was found to be on the south eastern corner of the site, facing generally towards the south south west, a conclusion similar to that reached in the report prepared for the Commissioners in 1984. This is also similar to the orientation of the existing harbour, as modified in 1866, after its original construction.

4.49 Thus the proposed shape, size and location of the new harbour entrance and the new outer harbour basin, together with the eastern end of the southern breakwater have been designed to meet the concerns identified by harbour users.

4.50 Yachts would be able to enter and leave at least the outer harbour under sail. A yacht leaving the outer harbour against a south west wind would need to tack, but there is ample room in the outer harbour to allow this. Boats tack out of Weymouth, which is only 30 metres wide and 1,600 metres long. Bridlington would be a minimum of 74 metres wide and no more than 300 metres from the lock to the outer harbour entrance. Any problem arising from tacking out would be insignificant compared with the benefit of easy access to the harbour in inclement conditions.

4.51 The water area of the proposed marina basin is designed to allow sufficient room for the creation and operation of a 500 berth marina in line with the potential identified in the research of Posford Duvivier and Deloitte Touche in 1998 (Documents ERYC 25a and 25b).

4.52 The area of land proposed to be reclaimed adjacent to the marina basin would need to accommodate marina support facilities. It is also intended to be sufficient to meet the development needs of Bridlington in relation to providing space for a new hotel and the new residential and commercial properties identified as necessary as part of the development mix. It also needs to allow the incorporation of open space, landscaped areas and walkways for public access to provide the high quality of development which is the key to the overall regenerative aims of the project. The land area proposed to be provided is similar in size to that proposed in the studies carried out for the Commissioners in both 1982 and 1984.

4.53 The total reclaimed area would amount to 17.2 hectares, made up of 0.56 hectare within Work No 1, the southern breakwater, 1.91 hectares within Work No 2, the peninsular between the South Pier and the new locked entrance to the marina, 13.7 hectares comprising Work No 5, the main reclamation area to the south of the existing harbour, and 1.01 hectares within Work No 6, the area proposed to be reclaimed within the existing harbour.

4.54 From the root of the South Pier to the root of the proposed southern breakwater, the distance along the promenade would be approximately 550 metres. From the root of the southern breakwater to the seaward end of the proposed eastern breakwater, the distance would be approximately 900 metres.

Outline design - the breakwaters

4.55 The proposal is to protect the marina and the associated development from the sea by breakwaters within which would be the access to the marina basin and the existing tidal harbour. The east breakwater (Work No 4) would abut the existing North Pier and, curving to the east, extend generally southwards to a point approximately 400 metres SSE of the end of the North Pier. The south breakwater (Work No 1) would extend from a point adjacent to the existing slipway on Princess Mary Promenade in a line eastwards for approximately 620 metres. It would then curve north, ending in a pierhead approximately 140 metres south of the North Pier. The proposals are shown on sheet 2 of Document ERYC 3.

4.56 The breakwaters would not be impermeable vertical structures like the existing Bridlington piers. They would be permeable sloped structures, designed to dissipate wave energy rather than to reflect it. The rock armour construction would reduce scour and overtopping and reduce problems associated with the reflection of waves from equivalent impermeable vertical structures. The South Pier currently reflects 90% of a wave which hits it. Rock armour would reflect only 30% to 35%. The height of the breakwaters would be similar to that of the existing piers, but, as sloping structures, they would not be subject to the same degree of overtopping.

4.57 The breakwaters would comprise primary armour, secondary armour and a core. Dredged material would be used to form the core. It would be bagged to prevent dispersion. The bagging would take place either on a platform on the beach or offshore. This process would continue for 3 to 4 months. Construction would normally start at the landward end of each breakwater, with materials delivered to the site by barge. The details of the construction process would be agreed with the chosen contractor. The breakwaters would be designed to have a life of 70 to 100 years, and to cope with a 1 in 200 years event. The specific sea conditions at Bridlington would be taken into account at the detailed design stage.

4.58 The idea of a freestanding offshore breakwater to the south of the southern breakwater, designed as a coastal protection work to prevent a sudden loss of beach, was included in the documents deposited for the Works Order. Tests of this concept have revealed, however, that it would not be necessary. The proposal for a freestanding breakwater is therefore not being pursued.

Outline design - marina basin walls

4.59 The sides of the locked marina basin would be formed with vertical walls to maximise the area of usable land and water. Outline design and cost estimates have assumed the use of steel sheet piling with cathodic protection against corrosion, to be built behind cofferdams.

Outline design - the lock (Work No 3)

4.60 Discussion with potential users has resulted in a proposed lock of 40 metres by 11 metres. (This would be the intended size, rather than the size of 30 metres by 15.85 metres shown on the deposited plans). A lock of 40 metres by 11 metres would comfortably allow use by the largest vessel likely to need to gain access to the marina, and would provide a lock capable of taking up to twelve average size yachts, thus minimising queuing during regattas and at other busy periods. Sector gates rotating about a hinge at the centre of the circle would be provided because of their speed of operation, their suitability for use with water heads from either direction, and their ability to close against a flow and open against a head.

4.61 The minimum water level in the marina basin would be set at Mean High Water Neaps. At higher tide levels, both pairs of gates could be left open, allowing free access.

Outline design - the fish quay (Work No 2)

4.62 Work No 2 was originally designed as a suspended slab supported by a framed structure. It was subsequently amended to a construction identical with the remainder of the marina basin walls.

4.63 The peninsular thus created between the South Pier and the lock would be a multi functional area. As originally conceived in the documents submitted with the Order, as well as providing the site for the new clubhouse for the RYYC, the Harbour Control Office and, potentially, a new location for the off shore lifeboat, it would house the new facilities for fishermen. These are intended to include an ice shed, bait storage, warehousing, diesel storage and fuelling facilities, tanks for the storage of fish, shellfish and lobsters, ablutions and a fish market. The existing facilities for the fishing industry in the harbour cover about 5,600 square metres, and are scattered around the harbour as shown on the plans accompanying Document APP/64. Whilst some of the facilities would remain in their existing locations, there would be a substantial concentration of new facilities adjacent to the South Pier on Work No 2. This is shown on Document APP/63.

Outline design - reclamation

4.64 The developable area of reclaimed land (Work No 5 and Work No 6) would be formed using marine won material, which is readily available. There is more than ten times the required fill available from easily accessible dredging areas in the North Sea. The material would be likely to be pumped ashore by pipeline from an offshore vessel to minimise disruption.

Design standards and assessment

4.65 The works have been designed having regard to

- the Code of Practice for the Design, Construction and Operation of Coastal and Inland Marinas and Yacht Harbours (Document ERYC 82)
- British Standard 6349, Maritime Structures (Documents ERYC 86 to 88)
- the manual on the Use of Rock in Coastal and Shoreline Engineering (Document BPHC 27)
- Guidelines for Hydraulic Design of Harbour Entrances (Document ERYC 51)

and a wide range of site specific investigations. Preparatory design has been taken well beyond the level which might be regarded as industry standard for this stage of the development of the project.

4.66 The proposed works do not present any insurmountable engineering difficulties, and can be constructed at reasonable cost. A full design risk assessment has been carried out (Document APP/AP16 Appendix II), and has revealed no unacceptable risks, provided the actions identified to respond to perceived risks are carried out.

4.67 The limits of deviation provided are intended to allow working space and any movement found necessary during detailed modelling of the harbour or during the planning process. They are normal limits for a scheme of this scale.

Dredging

4.68 Some capital dredging would be required in the outer harbour, and it is intended that the spoil would be placed as fill in the reclamation area. Dredging in the existing harbour would be confined to the area to the landward of the new sheet pile wall. That new wall, together with removal of the spoil by excavator rather than dredging plant, would prevent leakage into the harbour of any contaminants present as a result of historic use. Some maintenance dredging would also be required on an ongoing basis in the outer harbour. The use of channel marker posts would not cause any problem for this dredging. Modern equipment would be used, probably on a contracted basis.

The listing of the harbour piers

4.69 After the Council's Orders were submitted in October 2000, the two harbour piers were listed Grade 2 under the Planning (Listed Building and Conservation Areas) Act 1990 as buildings of special architectural or historic interest in January 2001. The design of the proposed works was considered and amended in the light of the listing, and the applications for listed building consent were submitted on 7 March 2001. There would be minimal alteration to the North Pier, which would

continue in its existing use, and be an intrinsic part of the new development. Under the proposals originally submitted, the southern face of the South Pier would have been mainly subsumed in the development, but, during the course of the inquiries, the Council produced revised plans which left visible part of the southern face of the pier.

The construction sequence and its impact

4.70 Construction would begin with the breakwaters. They would take just over eighteen months to complete. Some capital dredging could take place at the same time. Once construction of the breakwaters provided a sheltered environment, installation of the quay walls could proceed. Together with the breakwaters, these would provide bounding structures for the reclamation. Construction of the lock would take place within a sheet pile cofferdam installed at the same time as the quay walls. The overall period for construction of the works which would be authorised by the Works Order (including the reclamation) is anticipated to be about 30 months.

4.71 Some restriction to free access for vessels entering and leaving the harbour would need to occur during construction of the works adjacent to the navigation channel and, to a lesser extent, during reclamation. Access to the harbour from the sea would be maintained at all times, however. The extent of disruption would amount to no more than a need for occasional vessels to alter course during arrival at or departure from the port. The location of the delivery pipe for reclamation material between the dredging barge moored offshore and the reclamation area would be agreed with harbour users and marked with buoys and lights. A Fisheries Liaison Officer would be appointed to determine the requirements of harbour users with regard to navigation and to ensure that those rights were respected by the contractor. This officer would also deal with detailed practical issues such as ensuring that a fresh supply of clean sea water was maintained to the lobster tanks in the light of possible increased turbidity during construction.

4.72 On land, works would be planned to keep disruption to a minimum, retaining access for harbour users and the public in general along the promenades, to the Spa, and along the South Pier.

Environmental implications of the proposed works

4.73 The proposed works comprise the two breakwaters, the lock entrance to the marina, the peninsular between the South Pier and the lock, and the two areas of reclaimed land to the north and south of the South Pier. The impact the proposed works would have is described in the ES (Document ERYC 2) as supplemented by evidence given to the inquiries. That ES deals only with the works covered in the Works Order. It does not consider facilities that might be built on the reclaimed areas. These would be the subject of a separate environmental assessment when planning permission was sought for them.

4.74 Like any major development, the creation of a new marina and conversion of part of the foreshore at Bridlington to reclaimed land, would potentially have both adverse and beneficial implications. These implications are summarised in Table 5.1 of the ES (pages 199 to 211 of Document ERYC 2) together with recommended mitigation measures.

4.75 The ES identifies a number of adverse impacts which would arise during the construction phase, including

- potential risks to water quality
- direct loss of 13 hectares of littoral foreshore and 7 hectares of sub littoral environment
- disturbance to fish and birds, to fishing activity, and to residents and visitors
- visual obstruction of the listed piers
- marginal increases in noise, light and traffic
- disruption of access.

4.76 In general, however, the construction impacts would be short term. Adherence to the mitigation measures proposed in Table 5.1 of the ES and to construction industry good practice would reduce the significance of all predicted construction impacts to a minor or negligible level of significance. Most substantial items of material used in the construction would be delivered to the site by sea.

4.77 During the subsequent operation of the proposed marina, no adverse impact on ecology, marine biology or navigation would be anticipated. A reduction in water quality through the reception of wastes and water impounding could represent an adverse impact to the fishery, but this could be minimised through monitoring water quality and regular flushing of the marina. Analysis of the available data indicates that the integrity of the Flamborough Head cSAC would not be compromised by the proposed works.

4.78 The only moderate to major impacts identified as arising from the proposed works would be on the landscape character associated with the scale of the existing harbour and on the visual impact from certain locations, especially the Spa and South Marine Drive. By careful planning, these impacts could be limited to only moderate adverse impacts.

4.79 It is accepted by the Council that the loss of 13 hectares of foreshore will continue into the operational phase, but that would have a negligible environmental impact. A loss of that amount of beach has the potential to be a major adverse impact, but, considering the nature of the area to be lost, it has negligible impact in terms of biological loss, because the communities found there are present elsewhere in the area and are common.

4.80 The Council would implement all the mitigation measures recommended in the ES and also all the recommendations of English Nature, which are set out in Appendix 3 to Document APP/AP22. The Environment Agency have no outstanding objections to the proposed development.

4.81 The benefits which would be provided by the creation of the marina and associated facilities and the platform for the topside development need to be weighed against the adverse impacts identified. These benefits include

- an increased number of moorings and new marina facilities
- a reduction in wave heights in the harbour
- direct and indirect economic benefits, which would have a positive impact on the fabric of the town
- improved facilities for the fishing industry
- access to the harbour available during an increased proportion of the day
- advantages for the fish population and for wintering waders as a result of the creation of the new breakwaters.

Impact of the proposed works on coastal processes

4.82 In making an assessment of the impact which the proposed works would have on coastal processes, all relevant existing studies relating to the area between Flamborough Head and the River Humber have been considered. They are listed in section 6 of Appendix 5 to Document ERYC 2. In addition, further site specific research has been carried out. This is contained in documents ERYC 72, ERYC 71, ERYC 70 and Appendices B and D to I inclusive of Document APP/AP19. Wave behaviour has been assessed using the SWAN wave transformation model and the MIKE 21 - EMS wave model. Sediment movement has been assessed using the UNIBEST - LT software package. These are all industry standard programmes. They have been used in preference to a modelling tank, because computer models can produce quicker and more accurate results, without the limitations of scale which apply to physical modelling. The computer predictions have not been checked by field studies.

4.83 The net result of this research indicates that waves approaching the coastline would not be affected by the proposed works. The effects would be confined to local disturbance as a result of waves reflecting off the new breakwaters. The proposed works would not result in wholesale changes to the waves at beaches to the north and south of the proposed development.

4.84 The works would not exacerbate surge conditions in the existing harbour, as the new approach channel would attenuate incident waves, thereby creating more benign conditions in the harbour.

4.85 The tidal vector studies carried out demonstrate that sediment circulation would be maintained in Bridlington Bay. The beach survey undertaken supports the view that the beaches at Bridlington are healthy and accreting.

4.86 An investigation of the changes to the bed shear stress shows that the magnitude of the changes would be very small. The stability of the foreshore and the Smithic Bank would therefore not be threatened.

4.87 Whilst the marina would cause some small degradation in water quality, this would be well within the limits regarded as acceptable by the Environment Agency given tertiary treatment at the sewage works. Tertiary treatment will be required in order to meet virus compliance levels whether the proposed development takes place or not.

Land use planning considerations affecting the proposed development

The development for which deemed planning permission is sought

4.88 The Council seek a direction that planning permission shall be deemed to be granted for the construction and use of the works which would be authorised by the Works Order. The application (Document ERYC 1, Section 12) is in outline, with siting, design, external appearance, means of access and landscaping reserved for subsequent approval of the local planning authority (the Council).

The wider ultimate development proposals

4.89 Deemed planning permission is not sought as part of the current application for the land based developments which the Council would hope subsequently to see carried out on the reclaimed land affected by the Works Order. The Economic Impact Assessment carried out for the Council (Document ERYC 65) has, however, confirmed the potential for various types of development on those areas.

4.90 The Council has approved supplementary planning guidance (SPG) (Document ERYC 29) and a development framework (Document APP/AP28) for the eventual overall development. This development would ultimately require its own detailed planning application and Environmental Impact Assessment. The anticipated uses involved, to be considered against the policy framework applying to the site would, however, be:

Wetside/marina based activities

- 500 berth marina
- Harbour Master's office
- relocation of the RYYC dinghy sailing school
- RYYC clubhouse
- marina support services, including lavatories, changing rooms, showers, boat wash area, rest lounge etc
- boat workshops and boat yard

Dryside/land based activities

- residential development of between 240 and 321 units
- between 12 and 18 retail units, each of a gross floor area of 75 square metres
- between 2,265 square metres and 3,375 square metres of office space
- 100 bed 3 star hotel with bar, restaurant, swimming pool and gym, focused on conference trade
- refurbishment of the Spa to increase its potential for the conference trade
- leisure uses, currently envisaged as a themed pub and restaurant, pub and night club. Future possibilities are a multiplex cinema or other all weather attraction
- other possibilities are a 70 bed budget hotel, casino and a marine studies centre.

The planning policy framework

4.91 The Development Plan includes the Humberside Structure Plan (approved originally in 1987 and in amended form in 1993) (Document ERYC 26 (a) to (c)) and the East Yorkshire Borough wide Local Plan, adopted in 1997 (Document ERYC 27).

4.92 Policy E1 of the Structure Plan provides that a high priority will be given to the provision of land for new economic development and the creation of jobs. Policy E10 indicates that tourist developments within built up areas which are of a scale and type compatible with their surroundings will normally be permitted, providing there are no unacceptable transport and environmental problems. The policy gives particular encouragement to proposals which would help to lengthen the tourist season, attract more spending to Humberside, and benefit the local community as well as tourists. The Council's proposals would clearly be acceptable in terms of these policies.

4.93 Policy BRID 15 of the Local Plan provides that proposals for tourism development along the defined sea front (between the Spa and Leisure World) will be permitted so long as they are compatible with the character of the surrounding area. The development proposed would be substantially within that area.

4.94 Policy BRID 16 deals with the Bridlington Harbour area. The area to which it applies is shown in detail on Document APP/154. The policy indicates that proposals which would threaten the efficient operation of the harbour or limit its potential for reasonable expansion will not be permitted. It goes on to say that proposals which would be likely to affect the harbour area will not be permitted unless they are directly related to the leisure and commercial activities of the harbour itself. Paragraph 14.56 of the supporting written statement remarks that the Commissioners have long standing proposals to provide enlarged commercial facilities, which would have important advantages for the town's fishing fleet and would add a new dimension to the tourist industry in the heart of the resort. The extent of these proposals is also shown on APP/154. Although the proposed development would extend beyond the harbour area (as the Commissioners' earlier proposals did), the Council believe they would be entirely consistent with Policy BRID 16 in providing a reasonable expansion in line with the Local Plan policies and objectives. The proposals would greatly improve the efficient operation of the harbour by the creation of enlarged, modern commercial fishing facilities, providing more quay space for commercial activities, improved access arrangements for service vehicles, and improved navigability in the harbour as a result of the proposed engineering works. The marina would facilitate economic expansion directly related to leisure and commercial activities, as required by BRID 16, through the provision of additional facilities and additional opportunities for commercial activity.

4.95 Finally, in relation to the Local Plan, Policy BRID 17 provides that approximately 80 hectares of land at Wilsthorpe, south of Bridlington, could be developed for major leisure or tourism uses so long as they formed part of a comprehensive scheme for the site. Reference is made in the supporting written statement to a marina potentially being part of that comprehensive scheme, but the policy does not commit to a marina development at Wilsthorpe to the exclusion of any other possible site. The Council would prefer to see a marina developed in the centre of Bridlington, because only there would

it deliver all the economic benefits for the town centre. The town centre site would represent a more environmentally sustainable location, and would avoid the possibility that a marina at Wilsthorpe would create a competitor to Bridlington, depriving the town of future investment.

4.96 New Regional Planning Guidance was published in October 2001 (Document ERYC 39A) following an examination in public during 2000. Strategic patterns of development for the region are set out in Policy P1. The locational principles include support for proposals for the development of the local economy of coastal towns in a sustainable manner, with particular regard to the needs of tourism. Wherever possible, development should take place in accessible locations within urban areas. In terms of housing, the first priority is the reuse of previously developed land and the conversion of existing buildings within urban areas. Regional regeneration priority areas are established by Policy S2, which includes as the second priority (after the South Yorkshire Coalfields, an ERDF Objective 1 area) the Objective 2 areas, including the centre of Bridlington. A clear emphasis is placed on urban renaissance in Policy S3, and on existing city and town centres as the main focus for shopping, cultural, social, leisure and business services in Policy E1. This policy also states that existing centres will be the focus of efforts to upgrade environment, attractiveness and accessibility, especially in the regeneration priority areas. The policy argues that opportunities for central area living should also be integrated into improvement schemes wherever feasible. Policy E6 seeks to ensure that due regard is given to the importance of tourism to the regional economy, and to its potential to assist economic and environmental regeneration.

4.97 The Council's proposals would be in line with these policies of the Regional Planning Guidance, developing the local economy and reinforcing and enhancing the town centre, without any adverse impact on the local environment.

4.98 The proposals would also be in line with all national guidance contained in the relevant Planning Policy Guidance notes (PPGs) issued by the Government.

4.99 The housing component of the proposed scheme would follow advice on issues such as housing mix, density, parking and standards of layout and design contained in PPG 3. The retail and leisure element of the scheme would link closely to the existing town centre, and would reinforce the economic vitality and viability of the town centre as advocated by PPG 6. That judgement is reinforced by independent retail advice obtained by the Council (Document ERYC 114). The location of the proposed marina and associated development close to the town centre, with links between the development and the town centre, would accord with the approach to sustainability in PPG 13. The Council's proposals respect the special character of the North Pier and the South Pier as listed buildings, in line with PPG 15. Proper account would be taken of any archaeological assets located in or near the site in accordance with PPG 16. The marina development would be in line with the advice in the draft revised PPG 17 by adding to the leisure and recreation facilities of the area. It would also comply with the guidance in PPG 20, taking advantage of the coastal location, making beneficial use of vacant land through reclamation, and promoting the redevelopment and regeneration of a declining urban environment. Finally, the proposals would accord with PPG 21 by developing the tourism market and at the same time regenerating an adjoining urban area.

The supplementary planning guidance and the development framework

4.100 The SPG referred to in paragraph 4.90 above was approved by the Council following public consultation. The development framework derived from it (which has been approved by the Council and by the Marina Shadow Board) underlines that, should the development proceed, the Council, as sponsor of the project, would be looking to the developer to deliver a high quality development, in line with the general guidance contained in the development framework. The development framework (but not the SPG) was prepared after the listing of the two piers. The Council would require prospective developers of the reclaimed land to take part in an architectural competition to illustrate how the requirements of the development framework would be met.

4.101 The master plan for the site would need to reflect the broad layout and access arrangements shown in the development framework, and the approach to the general design and layout which the

Council would require. These are shown as an illustrative visualisation in both hard copy and electronic format in Document APP/AP28. Neither version presents a detailed representation of the buildings proposed for the site. They show an indicative illustration of the proposed land uses and the scale of development. The development framework provides that there should be no high rise development, and these visualisations indicate that there would be no adverse impact on existing properties which have a sea view.

4.102 It is accepted that the visualisations show yachts but no pontoons. They are intended to show only the scale and probable location of the landside development.

4.103 The suggested retail/leisure area at the north west corner of the site would provide a crucial link between the marina and the existing town centre, creating a direct functional and visual link between the marina, the old fishing harbour and the existing town centre.

4.104 The proposed hotel development site would provide an extension of the focal point created by the Spa, taking advantage of south facing sea views. The hotel would play an important role, with the refurbished Spa, in securing the economic regeneration of the town centre area.

4.105 The new residential areas would take advantage of their water front location, creating a high quality environment and acting as an economic catalyst for the development as a whole. Some residential properties might be bought by people with boats in the marina, but that would not be the primary purpose of the proposed housing. There is demand for good properties with sea views in Bridlington. These properties would not be outstandingly expensive in national terms, but would provide an opportunity for people from outside the area to add to the economic activity of the area, in some cases by taking retirement or second homes.

4.106 The commercial area would sit at the heart of the marina, forming the hub of activities, yet sufficiently remote from other land uses so as not to raise unacceptable adverse impacts of noise or smell.

4.107 Whilst the exact form of development on the reclaimed land would be a matter for negotiation with the chosen developer, as owners of the site, the Council would have ultimate control over what form of development would be allowed to proceed.

Possible interim uses of the reclaimed areas

4.108 Given the size and complexity of the overall project, it is possible that the land based development might not take place immediately following the construction of the marina and the land reclamation. Such a situation could arise because of prevailing economic conditions at the time (though given that the Council would be the landowner, with urban regeneration rather than commercial profit as the prime motivator, this scenario would be unlikely). If, however, such a situation did arise, the Council would intend to promote a range of interim development/leisure/tourism initiatives to ensure that the reclaimed land would be used for the benefit of the town and the local economy in the short term. The suggested interim measures listed in the development framework include:

- car parking
- coach parking
- a visitor centre
- hard and soft landscaping
- small scale leisure related retailing
- visitor attractions.

Listed building considerations

4.109 The Council also seek listed building consent for their proposals in so far as they affect the listed piers.

4.110 Policy En7 of the Structure Plan provides that the conservation and enhancement of buildings of historic or architectural importance will be encouraged.

4.111 Policy EN20 of the Local Plan states that proposals affecting listed buildings will only be permitted where the character, appearance and setting of the building and its curtilage will be retained. Proposals for alterations and extensions will only be permitted where they can be accommodated without the loss of the special interest of the building.

4.112 PPG15 sets out national guidance on the criteria to be applied when considering applications for listed building consent. Those criteria include the extent to which the proposed works would bring substantial benefit to the community, particularly by contributing to the economic regeneration of the area.

4.113 The proposed works would bring substantial benefits to the Bridlington community, and could be constructed in a manner which would retain the historic character and interest of the North and South Piers.

Traffic and transport implications of the proposed works

The policy context

4.114 The Council's Local Transport Plan (LTP) (Document ERYC 40) has been prepared in line with both Government guidance contained in the Transport White Paper (Document ERYC 42) and PPG 13 (Document ERYC 44) and the draft Regional Planning Guidance (Document ERYC 41). The LTP remains in line with the revised Regional Planning Guidance (Document ERYC 39A) issued during the course of the inquiries, and with the revised PPG 13 (Document ERYC 89).

Current traffic and transport provision

4.115 Bridlington is accessed by road by one of three primary routes - the A165 from the south, the A614 from the south west or the A165 from the north. All are single carriageway roads, and there is no proposal to upgrade any of them to dual carriageway. Road access to the site of the proposed works, both for construction and in the long term, would be from South Marine Drive, a multi purpose main distributor road linking the town centre to the A165.

4.116 Bridlington also has a railway station providing a passenger service on the Hull to Scarborough line. There is a relatively new bus station in the heart of the town centre, and a coach parking facility near the railway station to provide facilities for seasonal coach trips to the town.

4.117 In the high season, 75% of visitors come to Bridlington by car, with 5% on an organised coach trip, 4% arriving by scheduled bus, and 2% by train. The remaining 14% arrive by light van, cycle or on foot.

Current car parking provision

4.118 During most of the year there are 2,600 off street parking spaces available in Bridlington, which is ample provision for the needs of the town. There are also 1,000 on street parking spaces. There are three large seasonal overflow car parks providing a further 2,800 spaces to cope with the peak demand which occurs in July and August. During that high season period, the car parks in the town centre are constantly full, and most others are operating at 90% to 95% of capacity. The 613 space Moorfield Road car park, located some 600 metres from the town centre, is, however, rarely more than 50% full.

4.119 There are no additional car parks planned for the centre of Bridlington, and the LTP seeks to move towards a more sustainable transport future, with a central controlled parking zone, improvements to public transport, and an out of town park and ride facility.

4.120 The central controlled parking zone is in the process of being implemented. It will result in less provision for casual on street parking, because residents and visitors to hotels and guesthouses will be given priority.

4.121 The park and ride proposal is part of the five year programme in the LTP. It is specifically mentioned in the Government Office letter conveying the capital allocation for transport for 2001/2 (Appendix D to Document APP/AP25). Planning permission for a 1,700 park and ride site at Carnaby, some 3.5 kilometres south west of Bridlington Harbour, was given on 26 April 2001. It would be available to provide additional parking capacity for Bridlington generally. It is not seen primarily as parking provided for the marina and associated development.

Anticipated traffic growth without the proposed works

4.122 Over the period 1991-2001 traffic growth nationally has ranged from 9% (in areas of low growth) to 20% (in areas of high growth). Traffic growth on the main roads to Bridlington, however, has been negligible. An optimistic forecast of future growth on the main approaches to Bridlington over the period to 2015 would be 25%. Even with that level of growth, peak traffic demand of 16,450 vehicles per 12 hours is within the capacity of the single carriageway roads serving Bridlington. South Marine Drive would also be operating well within its design capacity.

The proposed works as a generator of traffic

4.123 Although it is only the structures covered by the Works Order which are before the inquiries, it is necessary to consider the Council's aspirations for the development of the marina and that planned to take place on the reclaimed areas in order to make a realistic assessment of the traffic which would be generated and which the current and any planned infrastructure would thus need to accommodate.

4.124 The additional traffic generators planned would be as follows

- a 500 berth marina
- marina support services
- boat workshops and boat yard
- residential units
- retail units
- office space
- a 100 bed 3 star hotel with bar, restaurant, swimming pool and gym, focused on the conference trade
- leisure developments.

In addition, it would be anticipated that the proposed development would generate additional trade and therefore traffic to the Spa and to the town centre generally.

Anticipated traffic growth arising from the proposed works

4.125 The marina is planned to be operational from 2005, and the wider development which would be carried out on the reclaimed land is assumed to be put in place over the ten year period 2005 - 2015. A traffic assessment based on full development in the year 2015 has therefore been prepared. The full analysis is contained in Document ERYC 112.

4.126 Taking the optimistic scenario as to traffic generated in relation to every variable, and adding a factor of 15% to reflect the fact that the marina could become a tourist attraction in its own right, the primary routes serving Bridlington (the A165 and the A614) would remain capable of taking the additional traffic generated.

4.127 In relation to the local road network, the traffic assessment again shows that the various junctions and roads which would be affected would accommodate the additional traffic which would be generated in a safe and effective way. Improvements would be required at certain junctions to improve cycle, pedestrian and bus priority requirements. The LTP includes for those proposals.

Anticipated parking pressures arising from the proposed works

4.128 In assessing the parking requirement and the provision which would need to be made for the proposed development, account has to be taken of two particular factors - on the one hand of the policy shift at national and local level to using car parking provision as a long term tool for reducing travel by car, and on the other hand the need for Bridlington and the proposed development to be attractive to visitors.

4.129 The marina and the proposed development on the reclaimed areas would generate an additional parking requirement of around 1,800 spaces based on stand alone assessment. The marina element of this assessment is based on 0.75 spaces per berth, a level of provision advocated by the Yacht Harbour Association. Some of the parking demand would, however, occur at different times of the day, and thus there would be potential for sharing provision (for example, retail and office use with leisure and entertainment provision). A reduction of 500 spaces could be made based on sharing. In addition, the park and ride provision to be made at Carnaby could reduce the need for on site provision by a further 300 spaces. The net on site provision for the proposed development would thus be around 1,000 spaces. An underground car park would be desirable, but cannot really be envisaged because of the high potential cost. A watertight tank would be required, and access arrangements might be difficult. The figure of 1,000 parking spaces on site could be provided without undermining the policies of the LTP.

4.130 Those policies involve both improvements to public transport through bus priority, bus stop upgrading, bus station and rail interchange improvements and the park and ride at Carnaby. By implementing them progressively through the ten year overall development period for the entire development proposal, there would be scope for effective management of the town centre parking pressures which would be generated by the proposed development.

The estimated cost of the proposed works

4.131 The designs of the works covered by the Works Order and the quantities of materials required to construct them have been estimated and checked against recent works of a similar nature. The cost of works and materials have been estimated at £32.574m at August 2001 prices. This estimate reflects the deletion from the overall works of the freestanding offshore breakwater originally proposed and included in the Works Order drawings.

4.132 New facilities for fishermen would be constructed on the land created by Work No 2. These would be funded by the Council as part of the construction cost. There has been no discussion with the RYYC or the Royal National Lifeboat Institution (RNLI) as to how any buildings of theirs on Work No 2 or elsewhere would be funded.

The funding of the proposed development

4.133 The Council operate a capital appraisal scheme to assess the relative importance of the many demands on capital resources. Given the overriding need for economic regeneration in the Bridlington area, the marina project scored very highly in the list of priority projects when it was first assessed in 1998/9. In the latest reappraisal of the forward capital programme of the Council in June

2001, the marina development was in fact the top scoring capital project out of more than 60 projects considered.

4.134 Because of the importance attached to the project, the Council have been setting aside capital to carry it out since 1998/9. By 31 March 2003, a total of £14m will have been reserved by the Council for the scheme. Interest of £1.814m will also have been earned on sums previously set aside, and the Council have resolved that these funds can also be used for the project. A commitment has been made by the Council to reserve a further £1.5m per year for four years as a contingency sum and to allow for variances in cashflow between spending and receipt of grant.

4.135 These figures and the estimated overall cost of the works covered by the Works Order of £32.574m should be seen in the context of the Council's annual spending of around £500m and its five year capital investment programme of £330m.

4.136 The balance of the estimated cost of the works beyond the £16m which the Council will have available by March 2003 would be met by an estimated receipt of £17m in grant aid.

4.137 It is estimated that a capital grant of up to £10m would be received from Yorkshire Forward, and that a grant of £5m would be available from the European Regional Development Fund (ERDF). In addition, the former Ministry of Agriculture Fisheries and Food agreed that likely support of £2m for coastal defence work which would in effect be incorporated into the marina project could be available to assist the project. A smaller amount of capital grant may also be available under the EU Financial Instrument for Fisheries Guidance for qualifying fisheries projects within the overall scheme.

4.138 In addition, revenue grants of £6.5m are anticipated from Yorkshire Forward and the European Union to continue capacity building in the local community in support of the regeneration initiatives in Bridlington.

4.139 Contractual commitments to provide these grants do not exist at the moment, but that is not unusual given the need for statutory Orders to be approved before the works can be put out to tender. The exact nature of the present level of commitment of grant aiding bodies is shown in Appendices B1 to B4 inclusive of Document APP/AP11. The funding envisaged from Yorkshire Forward (which in the case of both capital and revenue would be provided over a period of 5 years) should be seen in the context of their annual budget of £254.89m (2001/2). Yorkshire Forward are members of the BRP, and have been since they were set up in April 1999.

4.140 EU grants, both capital and revenue, are dependent on the area's designation within Objective 2. This runs until 31 December 2006. No EU grant can be applied for under Objective 2 after that date unless the designation is renewed, which must be uncertain at this stage. Grants approved before 31 December 2006 may, however, be drawn down until 31 December 2008. The time limits on this important source of grant mean that further delay must be avoided. Time spent trying to secure agreement with the Commissioners on a joint scheme can no longer be accommodated. A contract for the works covered by the Works Order would not be let by the Council until firm grant offers had been received.

4.141 The eventual development on the reclaimed land would be carried out by a developer selected by the Council.

4.142 The Council have successful experience of working with both public and private sector funders and partners through Private Finance Initiative projects and a waste disposal contract, all of which are of a similar financial scale to the marina project.

Financial implications of the Council's agreement with Yorkshire Water

4.143 As mentioned in paragraph 2.10 above, the objection of Yorkshire Water was withdrawn during the inquiries. This followed acceptance by the Council of responsibility for any adverse effect on Yorkshire Water's sea outfalls during the construction of the works which would be authorised by the

Works Order or within five years after the completion of those works. A copy of the agreement with Yorkshire Water is an appendix to Document APP/P244.

4.144 The potential liability of the Council under this agreement could not be covered by insurance. The risk would be limited, however, by a programme of monitoring and mitigation measures and by the transfer of part of the risk to contractors.

4.145 Under the agreement, the Council might be called upon to remove a build up of sediment from the outfall discharge points if it had been caused by the development. The cost of such an operation would be approximately £5,000 per event. Far less likely might be the need to deal with sediment removed from the beach or from the outfall point of the short sea outfall as a result of the development. Removal from the beach would be dealt with by the construction of one or two additional groynes at an estimated cost of £125,000 for one groyne or £240,000 for two. Loss of sediment from the area of the outfall discharge point would be dealt with by the introduction of a scour blanket at a cost of around £30,000.

4.146 On a worst case scenario, the complete replacement of the short sea outfall would cost around £2.5m, and the replacement of the long sea outfall would cost an estimated £10m. However, for this to arise there would need to be an extraordinary sequence of events, including total failure of the monitoring and mitigation measures agreed jointly by the Council and Yorkshire Water. If the risks are properly managed, this should not arise.

4.147 Any costs falling on the Council under this agreement would be met from the project contingency provision of £6m. In the extremely unlikely event of costs beyond that contingency arising, they would be met from the Council's capital resources or from use of reserves. Unallocated reserves stand at £5.3m, and total general fund reserves stand at £21.7m.

The current operation of Bridlington Harbour

4.148 Bridlington is a small harbour, primarily committed to supporting a declining local fishing industry. It attracts some additional income from leisure sailing, but the capacity to take advantage of this growing activity area is limited in Bridlington by space, by limited access to the harbour during some states of the tide, and by inadequate harbour facilities.

4.149 The existing harbour currently offers tidal moorings for around 190 craft of all types. It could be reconfigured to provide a limited number of additional moorings for yachts. Substantial investment is needed, however, to refurbish the jetty and the buildings on the South Pier and to provide improved facilities for both commercial fishermen and leisure sailors. The harbour currently has an aura of neglect.

4.150 The resources of the Commissioners to achieve this necessary investment are limited. Their surpluses in 1998, 1999 and 2000 were £69,595, £77,941 and £13,839 respectively. In each of those years, more than half of their total annual income of just over £500,000 came from land based property rentals and car parking rather than from the management of marine related activity in the harbour.

4.151 The Commissioners have an approved establishment of 14 full time, 8 part time and 5 seasonal staff to operate the harbour (including the related services of car parks, lavatories and the museum). This is a generous staffing complement compared with that which applies at other harbours such as the River Hamble Harbour, Lymington Harbour and Brighton Harbour Village. All of those harbours are significantly more substantial operations, run by smaller staffing contingents.

Governance issues affecting Bridlington Harbour

4.152 The guide to good governance for Trust Ports was launched by the Government in January 2000 (Document ERYC 8). It seeks to modernise the management of Trust Ports, reconstituting boards with a smaller number of suitably qualified Commissioners, selected by open competition and subject to stringent selection criteria.

4.153 The present management arrangements for Bridlington Harbour involve up to 22 Commissioners, with no maximum age and no maximum period of service. The qualifications of Commissioners are irrelevant to their appointment, and some are nominees of particular interest groups. Clearly these arrangements need to be altered to conform to those advocated in Document ERYC 8.

4.154 The Empowerment Order would provide for the nine appointed members of the new Harbour and Marina Authority to be chosen on merit, regard being had to equality of opportunity. Members would be required to be independent and not representative of any particular interest. They would serve for a maximum of three 3 year terms (except for the Chairman, who could serve a fourth term), and could only serve until the age of 70. The Empowerment Order therefore follows the guidance given in Document ERYC 8. The extent to which the Commissioners' Order does so will be examined in Section 10 of this report.

4.155 A Shadow Authority has already been appointed along the lines set out in the Empowerment Order. Four members were appointed by the Council and five by the BRP. Appointments were made following advertisement of the intention to create a Shadow Authority (Document APP/125).

4.156 The Shadow Authority is charged with preparing a draft business plan, staffing structure and health, safety and environmental policies for the new Authority, if it is eventually authorised by the confirmation of the Empowerment Order. Members of the Shadow Authority could be considered for appointment to the new Authority, but there is no guarantee that they would be appointed. Existing Commissioners would also be welcome to apply for appointment to the new Authority, providing they met the qualifications for membership.

4.157 The Shadow Authority is not a Sub Committee of the Council. Five of its members are not Members of the Council. Nor would the new Authority be subservient to the Council.

The future operation of Bridlington Harbour

4.158 The Revision Order would dissolve the Commissioners and pave the way for the transfer of their undertaking to the new Authority set up under the Empowerment Order.

4.159 The Commissioners have been involved in the proposed marina development from its initial concept stage, because they were among the original members of the BRP. They expressed support for the principle of the marina project on many occasions in minutes and correspondence.

4.160 In the spring of 1999, however, differences between the Commissioners and the Council started to emerge. The Commissioners were reluctant to release land for the project at the west end of the harbour. This land is seen as essential by the Council. Without it, the scale of the commercial development would be reduced, and the link between the project and the town centre would be prejudiced. The Commissioners also wished to continue to operate the harbour as a trust port, independent of the proposed marina. The Council believe that the marina and the harbour should be managed as one entity. Prospective developers would also not be prepared to commit resources to prepare development proposals unless the Council could show that all the necessary land for the project had been secured, and could be made available for development without the involvement of any other party.

4.161 During 1999 and early 2000, efforts were made to secure agreement with the Commissioners on a structure for the marina project which they would feel able fully to support. By September 2000, however, it was clear that such agreement would not be reached.

4.162 During 2000, the Council tried to secure a developer for the land to be reclaimed. Advertisements were placed in the EU Journal (Document APP/121) in April 2000. A total of 62 potential developers sought details of the development opportunity. All were asked to complete a

questionnaire about their experience and resources. Only two questionnaires (Document APP/122) were returned, and these were incomplete. The Council sought an explanation for this poor response from all those who had expressed initial interest. The clear message they received in return was that, while there was uncertainty as to the availability of powers and as to the availability of the necessary land for development, it was premature to seek a developer. The Council therefore abandoned this procurement process, particularly in the light of the withdrawal of support for the scheme by the Commissioners, who are such important land owners in the proposed development area.

4.163 If the Revision Order were confirmed, Article 3 would allow the Council to appoint a day on which that Order would come into operation. On that day, under Article 4, the Commissioners' undertaking and assets would vest in the Council. This would facilitate the Council assembling the land required for the construction of the marina and the landside works. The Council would, as soon as practically possible, grant a 999 year lease of the harbour at a peppercorn rent, free of debt charges, to the new Harbour and Marina Authority, which would be set up under the Empowerment Order. The new Authority would then commence managing the harbour immediately. It is accepted that the new Authority would, under these arrangements, have control of the existing harbour even if later investigations showed that the scheme under the Works Order could not be achieved.

4.164 The Council would then commence a new procurement process for the marina. The construction of the marina and the reclaimed land would be funded by the capital set aside by the Council and the grant aid which has been promised. Once the marina was constructed and open to the public, the Council would transfer the marina, again free of debt and at a peppercorn rent, to the new Authority.

4.165 The current staffing level for the harbour would be sufficient, with appropriate training and the use of modern computer accounting packages, to operate both the harbour and the proposed marina. Running the harbour and the marina jointly would be crucial, not only for achieving economies of scale, but also to achieve the standards of safe operation required by the Port Marine Safety Code (Document ERYC 69).

4.166 It is anticipated that the existing employees of the Commissioners would transfer to the new Authority under the Transfer of Undertakings (Protection of Employment) Regulations 1981.

The financial viability of the proposed Yorkshire Harbour and Marina Authority

4.167 A debt free harbour and marina with either refurbished or new facilities would provide the new Authority with the optimum starting position from which to build and develop its business. Whilst that business (and, in particular, the marina business) was built up, however, the Council would enter into an agreement with the Authority to provide financial support to help to meet any shortfalls in the first ten years of operation. This would take the form of direct subsidy, income guarantee, interest free and interest bearing loans. The scale of support to be offered is envisaged to be, in the first five years of operation, subsidies of up to £75,000 per year (but limited to £150,000 in total), income guarantee and interest free loans of up to £50,000 per year. In the next five years, a phasing out of the income guarantee, interest free loans of up to £50,000 per year plus interest bearing loans of up to £50,000 per year. Thereafter, interest bearing loans would need to be negotiated by the Authority.

4.168 This level of support by the Council would be justified by the positive economic impact which the scheme would have on Bridlington. Support from the Council at a greater level or for a longer period is not envisaged. In reality, however, even conservative estimates of marina occupancy levels suggest that operating profits would be achieved by the new Authority within five years.

4.169 There is no reason to believe that charges to the fishing industry for facilities in the harbour would be increased. The present accommodation for the fishing industry is poor, and the new facilities would be much better, but they would be created by the Council, using grants, and then handed over to the new Authority without debt. There would be no need to charge anything more than is charged at present. To offer some assurance to the fishermen on this point, the Council resolved on 30 April 2002 that, if the Council's Orders were confirmed, provision should be made in

the lease from the Council to the proposed Harbour and Marina Authority that the rate of charge on fish landings (the major charge to the fishermen) should not be increased for a minimum period of five years (Document APP/216). The new facilities to be provided are those that the fishermen have said they want. They have supported the Council's bid for grant aid (Document APP/RP 48 last appendix).

4.170 Growth in revenue for the new Authority could be generated from growth in the existing shellfish businesses, from new businesses attracted to the harbour or from diversification.

4.171 Surpluses of the Authority could be applied by the Authority in the creation of sinking funds or reserves and in investment in assets. Any remaining balances would be passed to the Council to use in the regeneration of Bridlington.

The justification for the Works Order

4.172 The Works Order is promoted to authorise the development of a marina as a new attraction at Bridlington - one which would bring an additional group of visitors with increased spending power, but one which, at the same time, would also create a feature of interest and therefore an attraction for other visitors. In addition, the works to create the marina would offer the opportunity to improve facilities for the fishing industry in Bridlington, and to provide a platform around the marina for further development to improve the facilities, the attraction and the image of the town. The refurbishment of the Spa and the creation of new hotel accommodation, supporting the role of the Spa as a major conference centre, would further strengthen the economy of Bridlington by extending the visitor season.

Proposed modifications to the Works Order

4.173 The Council seek the confirmation of the Works Order as modified by the amendments requested to that Order in Documents APP/36 and APP/259. These are all amendments of detail, rather than of principle, proposed to clarify or to correct the Order as originally submitted.

The compulsory purchase powers

4.174 In order to carry out the works which would be authorised by the Works Order, the Council would need to acquire all the land shown on the Land Plan (sheet 4 of Document ERYC3) and described in the Book of Reference (Document ERYC4). The precise purpose for which each plot of land referred to in the Book of Reference is required in connection with the works is listed in Document APP/60.

4.175 With the exception of plot 16, all the plots listed in the Book of Reference are owned either by the Council or by the Commissioners. The plots owned or partly owned by the Council (plots 1, 2, 3, 4, 6, 9 and 17) are included in the land for which compulsory powers of acquisition are sought in order to deal with public and private rights over those plots which would be inconsistent with the proposed development. The plots owned or partly owned by the Commissioners (plots 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16) are included because the works which would be authorised by the Order could not be carried out without ownership of those plots. If the Revision Order is confirmed, it would transfer the Commissioners' undertaking to the Council; but the Council would still need compulsory powers of acquisition in relation to the plots currently owned by the Commissioners in order to ensure that the other interests in those plots listed in the Land Plan could be bought in. The bulk of plot 16 is owned by the Crown Estates Commissioners. They have indicated that they are willing to sell the Crown's interest in the sea bed to the Council, but a part of that plot is owned by the Commissioners, and the whole plot is therefore included in the area for which powers of compulsory acquisition are sought. If the Order is confirmed, the Book of Reference (Document ERYC 4) would need to be amended to reflect the Commissioners' interest in part of plot 16.

The application for deemed planning permission

4.176 Under Rule 5 (7) of the Applications Rules, the Council seek a direction under Section 90 (2A) of the Town and Country Planning Act 1990 that planning permission shall be deemed to be granted for the construction and use of the works specified in Schedule 1 to the Works Order. In effect, the application (Document ERYC 1, Section 12) is in outline, with siting, design, external appearance, means of access and landscaping reserved for subsequent approval by the local planning authority (the Council).

Modifications to the application for deemed planning permission

4.177 As indicated in paragraph 4.58 above, tests have revealed that a freestanding offshore breakwater to the south of the southern breakwater is not required.

4.178 Discussions with the RNLI have led to the conclusion that it would be wise to keep open the option of retaining the slipway currently used by the offshore lifeboat south of the Spa from South Marine Drive across the promenade to the beach. The Council would therefore wish to make provision for the retention of this slipway, both during construction and thereafter.

4.179 Replacement works plans have therefore been prepared (Documents APP/250 and APP/251), and the Council would wish these to be substituted for Sheets 2 and 3 in Document ERYC3. APP/250 also shows the revised size of the proposed lock (see paragraph 4.59 above).

Conditions on the deemed planning permission

4.180 The Council suggest conditions on the deemed planning permission dealing with the approval of reserved matters, and of materials, ancillary structures, drainage and the type of fill used, together with conditions regarding a programme of archaeological work and the minimising of problems during construction. The detailed conditions suggested by the Council are set out in Document APP/235. The Council would accept the amendments to Document APP/235 suggested by the Inspector. These relate to the development being carried out specifically in accordance with approved plans, and the need for any approval given by the local planning authority to be given in writing.

Unilateral undertaking in connection with the proposed works

4.181 In an attempt to overcome certain of the objections to the Works Order, the Council offer a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972. The executed undertaking comprises Document APP/262. It would commit the Council to:

- formulate and make publicly available before the commencement of development an environmental action plan, setting out the actions proposed and taken in carrying out the mitigation strategy proposed in the ES, but developed in consultation with English Nature and the Environment Agency
- prepare a management plan in line with the requirements of the mitigation strategy
- require any prospective developer of the subsequent landside development which would be carried out on the platform created under the Works Order to submit a topside development master plan for public consultation prior to submission of a planning application for such development
- organise an architectural competition for the landside development in association with appropriate national bodies
- prepare a public art strategy in consultation with appropriate national bodies as part of the landside development
- amend the development framework prepared by the Council for the landside development to accommodate any recommendations made by the Secretary of State

- appoint a Fishery Liaison Officer
- invite the RNLI and the RYYC to establish new facilities within the marina development, and to provide an appropriate site for each of them, subject to the negotiation of terms.

The applications for listed building consent

4.182 Under Section 10 of the Planning (Listed Buildings and Conservation Areas Act 1990, the Council seek listed building consents to authorise the works proposed in the Works Order which impact on the North Pier and on the South Pier. The two original applications for listed building consent comprise Document ERYC 38.

Modifications to the applications for listed building consent

4.183 During the course of the inquiries, the Council have agreed to a number of changes to the marina in order to mitigate the impact of the proposed works on the listed piers. These include the retention of 95% of the parapet of the South Pier (shown on Document APP/69), an amended design for the junction of the North Pier with the eastern breakwater to provide a softer transition between the existing and the new structure (shown on Document APP/160), a lowering of the access road to the proposed development to reveal part of the south face of the South Pier (shown on Document APP/163), and the submission of detail regarding the access road to the development from South Marine Drive (originally shown on Documents APP/70 and APP/71). Document APP/226 shows revised boundaries of the listed piers, which have been agreed with English Heritage. The alternative version including the Old Lifeboat Slip in the listed South Pier is not agreed by the Council or by English Heritage.

4.184 The Council also put forward three options to vary the scheme in its impact on the listed piers, which they say are "open to the Secretary of State to consider".

- Option 1 would reduce the size of the Fish Quay (Work No 2) by some 20%, from 18,300 square metres to 14,700 square metres. It is shown on Document APP/P213A. This option would still provide adequate space to meet the need for facilities for the fishing fleet, but it would be possible to move those facilities some 60 metres away from the listed pier. It would involve the provision of a new clubhouse for the RYYC, not on Work No 2 as originally intended, but elsewhere in the scheme. This would be acceptable to the RYYC (Document SUP/20).
- Option 2 would remove the small housing area (earmarked for approximately 40 dwellings in the development framework) on the land which would be reclaimed south of the central part of the South Pier. This revision is shown on Document APP/P213B. The housing could be relocated elsewhere in the development. The area on which it was originally shown could be used for a combined car or boat parking area, thereby creating an open area abutting the southern face of the South Pier.
- Option 3 would relocate the main intended vehicular access route into the landside development by moving it approximately 50 metres to the south at its western end. This option is shown on Document APP/P213C. It would move the access route further away from the line of the South Pier, and the levels of the scheme would then allow for the reclaimed area next to the South Pier in this location to be lowered by approximately 1.7 metres, revealing more of the face of the South Pier in this area.

4.185 English Heritage does not object to any of the three options, their view being that revealing more of the outer wall of the South Pier and moving proposed buildings away from it would enhance the setting of the pier within the finished scheme (Document APP/225).

4.186 It would also be possible to retain the Old Lifeboat Slip within the scheme, should it be considered (contrary to the Council's view) that the slipway formed part of the listed South Pier. It would have no functional purpose, however, and could become a nuisance or litter zone within the marina area.

4.187 A more radical approach would be to give the Old Lifeboat Slip a proper function as a slipway, moving an inner marina basin westwards against it; but this would breach the land bridge area linking the bulk of the landside development with the harbour and the town centre, an important aspect of the regeneration proposals. It would leave a requirement to provide a new access road to Work No 2, together with extra piling and waterproofing of the South Pier, at what would be an increased project cost estimated at £2.5m.

4.188 The Council's preference from a listed building viewpoint would be to adopt Option 3. Option 1 would not significantly improve the relationship of Work No 2 to the listed pier, and Option 2 would involve the loss of an exciting opportunity to create some high quality housing adjoining the South Pier.

Conditions on the applications for listed building consent

4.189 The Council suggest conditions on the listed building consents dealing with materials, damage to the listed buildings, a programme of archaeological works and a restriction on use of the piers by construction traffic without consent. In addition, in relation to the North Pier, a condition requiring a scheme of repair for the wooden steps and landing stage adjoining the north end is suggested. In relation to the South Pier, conditions reflecting any of the options set out in paragraph 4.184 above are suggested, together with conditions requiring prior approval of the method of abutment of Works 2, 5, and 6 with the pier, and the use of stone from the wall adjacent to the Spa Promenade in the construction of the new east wall to the harbour fronting Work No 6.

4.190 The detailed conditions originally suggested by the Council were set out in Document APP/234. Following a conditions session during the inquiries, however, the Council were prepared to accept many of the suggestions made for amendment of the conditions which the Council had offered. Suggestions made by the Listed Building Assessor and by the Inspector to clarify the drafting of the conditions were accepted, together with a number of suggestions put forward on behalf of the Commissioners. Document APP/248 comprises a revised set of listed building conditions which would be acceptable to the Council. It also includes on pages 4 and 5, for ease of reference, the only outstanding points of difference between the Council and the Commissioners regarding listed building conditions.

Unilateral undertaking in connection with the applications for listed building consent

4.191 In an attempt to overcome certain of the objections to the applications for listed building consent, the Council again offer a unilateral undertaking. The executed undertaking comprises Document APP/261. It would commit the Council to:

- carry out a schedule of repair and enhancement work to the listed piers, agreed with English Heritage
- retain and reuse in the works stone arising from the works
- amend the development framework prepared by the Council to accommodate any recommendations made by the Secretary of State
- carry out the landside development in accordance with the principles of the development framework.

The justification for the Revision Order

4.192 The Commissioners cannot remain as they are, because their constitution falls well short of the requirements of the Trust Ports Review. They need to be reconstituted under their own Order or replaced under the Council's proposals. The Revision Order is necessary to remove the potential for blockage and delay of the Council's proposed development which the Commissioners would represent if they continued in existence. The grants which are available for the proposed works are in some cases only available for a limited time. It is only a major development, which the Commissioners by

themselves could not achieve, which would bring the necessary change to Bridlington's fortunes. The Revision Order is also necessary to secure the prospect of joint management of the harbour and the marina, with the twin benefits of safety and economy which that possibility would deliver.

Proposed modifications to the Revision Order

4.193 The Council seek the confirmation of the Revision Order as modified by the amendments requested to it in Document APP/36. These are all amendments of detail, rather than of principle.

The justification for the Empowerment Order

4.194 The Empowerment Order is promoted to establish the Yorkshire Harbour and Marina Authority, which would comply with the standards set in the Trust Ports Review. It would provide an Authority which would be independent and fit for its purpose, rather than representative of any interest. Any financial surplus available after the Authority had made proper financial provision for its future would be paid over to the Council, as the representatives of the local community, to apply in the regeneration of Bridlington.

Proposed modifications to the Empowerment Order

4.195 The Council seek the confirmation of the Empowerment Order as modified by the amendments requested in Documents APP/36, APP/132 and APP/260. These are amendments of detail, rather than principle, except for

- the addition of a prohibition (save in exceptional circumstances) on the appointment of a member who would reach the age of 65 during his first term of office
- the deletion of a requirement that any member who is also a member of the Council should cease to be a member of the Authority on ceasing to be a member of the Council
- the addition of a requirement that the term of office of an Authority member should cease on his or her 70th birthday
- the specification of a range of expertise which members of the Authority between them should be able to demonstrate
- the addition of power for indemnity insurance to be obtained to cover members and officers of the Authority
- the addition of default powers in favour of the Council, to be operated only with the consent of the Secretary of State
- the deletion of the power to pay salary or fees to members of the Authority, leaving power to pay only allowances and/or expenses.

5. The cases of the supporters of the council's orders

The material points are:

5.1 All the **main political parties represented on the Council** support the marina scheme. A representative from each of those parties gave evidence not for the Council, but in support of the Council.

Inspector's Note: Technically, Councillor Steven Parnaby was an interested party rather than a supporter, since he did not make a written representation on the Orders within the statutory period for objections and representations, but I have dealt with his contribution here so that the cases made by all the Members of the Council who appeared at the inquiries can be reported together.

5.2 Bridlington is the town with the largest population in the Council's area, but it is in economic decline. The only realistic chance of arresting that decline is through the development of the tourist industry.

5.3 For many years, there have been attempts to develop a marina in Bridlington. They have not been successful because of the difficulty of raising the necessary finance. Now, for the first time, the finance is available. Marinas in other parts of the country have become major tourist attractions, and have proved successful in regeneration terms. The proposed marina at Bridlington would have associated leisure, retail, commercial and residential elements, all linked both to the harbour and to the town centre. The refurbishment of the Spa and the building of a new hotel would improve the conference facilities which Bridlington can offer. Without the Works Order, there would be no central location available to provide a site for a new hotel.

5.4 Development of the conference trade, and the extension to the season which it would provide, would benefit not just the new hotel, but also existing hotels and guest houses and other businesses in the area which serve the tourist trade.

5.5 A smaller marina would not achieve the same benefits. A developer would not be interested in investing in development associated with a smaller marina. Nor would a marina alone achieve the necessary change in Bridlington. It is the overall package of development proposals which will regenerate the town.

5.6 Alternative attractions have also been considered by the Council, but they would not achieve the same benefits as the proposed marina. A leisure park could be developed, but it would be outside the town centre of Bridlington, and it would therefore pull visitors away from the town centre. It would do nothing to encourage the conference trade, which could have such an important impact on extending the season. Nor would an indoor attraction, which again would probably be outside the town centre, and would not employ many people.

5.7 The marina project is the only sensible scheme with the reach to deal with all the issues facing Bridlington.

5.8 The marina project has almost total support on the Council even though the majority of Members of the Council represent areas outside Bridlington. They see the needs of Bridlington, and are therefore prepared to commit significant capital resources to Bridlington.

5.9 Whilst Members of the Council are not experts on sailing or development, they have obtained professional advice from their own qualified officers and from relevant experts of national and international repute before reaching a decision to support the marina proposal. Two of the elected Members who gave evidence in support of the Council's Orders stated that they did not believe that the Council should proceed with the land reclamation which would be authorised by the Works Orders without a developer in place for the landside development.

5.10 The marina project is supported by **the Bridlington Chamber of Trade and by the Hull and Humber Chamber of Commerce**. Bridlington cannot stand still. It must either expand or decline.

The town has suffered a number of blows to its economy over the past twenty years, including the closure of quality shops and the town's largest hotel, as well as the reduction in the fishing fleet and in jobs in other major local employment activities. The present overall viability of many town centre shops is fragile, with a significant presence of low price, low value seasonal shops.

5.11 Businesses seek to build on their strengths. Bridlington should do the same. Its biggest asset is its coastal location, and that should be the foundation of any development. The town has to have confidence in itself before it can expect others to demonstrate confidence by providing inward investment. Public investment in the marina would demonstrate this self confidence.

5.12 The marina is the only viable project on the table at the moment with which to kick start the local economy to give Bridlington and potential investors confidence for the future. A marina would not solve all of Bridlington's problems, nor would it be the end of the regeneration process. But it would send out a powerful and positive message, and the extra visitors, jobs and houses it would bring would act as a catalyst to the economy as a whole. It would very significantly enhance Bridlington's tourism offer, and attract many more visitors to the town. The knock on benefits for existing businesses in the town could be substantial, and enhanced trading could bring new investment to the existing town centre as well as to the marina area.

5.13 There are local businesses prepared to invest substantially in Bridlington if the marina goes ahead. One example is the **Bridlington Links Golf Course**, which is situated just north of Bridlington on the Flamborough Road. Currently, the operation of this business is very seasonal. The company operating the course considers, however, that the development of the marina would increase the number of people using the course and that it would extend the season of such use.

5.14 The present owners have already invested more than £250,000 in improving facilities at the Golf Course since they took over the company in 1999; but they have plans to obtain land for accommodation to complement the course which will require investment of more than £1m, plans to provide further accommodation by converting the derelict Dane's Dyke Farm at a further cost of more than £1m, and plans to build a new fitness club and indoor heated swimming pool at a cost of around £500,000. Together, these developments would provide an additional thirty jobs at the Golf Course, but the investment decision will not be made until it is clear that the marina development will proceed.

5.15 The **Chairman of the BRP**, a local accountant with over 1,000 clients locally and regionally, gave evidence of other businesses applying for investment loans to banks and being offered a loan "subject to the marina going ahead". He also believed that the marina should not go ahead alone. He believed the works authorised by the Works Order should not be started until a developer for the landside was in place.

5.16 The marina should not be seen as elitist. Sailing is for all, and the enjoyment of Bridlington Bay would be shared by all, whether from large luxury cruisers or a single seat dinghy. Nor would the marina just be for those taking to the sea. Where there is water, there are spectators; and the more activity that there is on the water, the more onlookers will wish to view the daily activities and events.

5.17 The marina development is supported by the 97 member **Bridlington Hotel and Guest Houses Association**. They consider that the small amount of beach lost to the development would be amply justified by the improvement to the economy of the area which they consider the development would bring. The conference trade now accounts for 20% of the bed nights spent in the premises of members of the Association. The marina and associated Spa and hotel development would increase that very important type of business. It is a growth area, but growth is inhibited by the lack of a large hotel in Bridlington. Thus, even though a new hotel would apparently represent added competition for members of the Association, the members support the Council's proposals. The sailing season is also important to members of the Association. While one person might stay on a boat, the rest of the crew or the rest of the family often stay in premises owned by members of the Association.

5.18 The marina is also supported by the owners of **Far Grange Park**, which operates a major 16 hectares caravan holiday park some 13 kilometres south of Bridlington. Started in 1976, the site won

the award as Best Park in England in 1998. It now employs 53 permanent staff, with about the same number again as seasonal staff during peak periods. The experience of Far Grange is that people will come to the east coast for high standards and modern facilities, and that is so even in adverse weather. The catchment area of Far Grange includes Nottingham, Manchester and Newcastle, which are within two hours drive. The catchment of the marina would be the same. In the same way, Far Grange used to close between October and Easter, but now it is open all the year round. The same pattern would develop at the marina.

5.19 The owners of Far Grange consider that the marina project should be supported because it is large, ambitious, long term and prestigious. It would benefit the whole of the coastal area around Bridlington and the businesses located there. It would offer better job prospects and improved social opportunities for local people, and encourage young people to stay and to work in Bridlington.

5.20 The case for the Council's Orders is also strongly supported by **the Royal Yorkshire Yacht Club**. The RYYC was established in 1847. It provides a valuable recreational service to the community and makes a valuable input to the tourist economy of Bridlington. The Club's support for the Council's scheme is informed by the knowledge of its members of the sport of sailing and of the potential market for berths in Bridlington.

5.21 For many years, the RYYC has actively encouraged and supported proposed marina schemes for Bridlington. It has done this because, when the tide is in, the harbour is a big attraction to visitors. If boating activity was taking place all the time, the attraction for visitors would increase. Enhanced access and more varied berthing facilities would also encourage more boats to Bridlington. People would stay longer in the town, and the benefits to the economy would be immense.

5.22 Bridlington Bay offers the best sailing location on the East Coast of the UK. It is sheltered from the prevailing south westerly winds, protected from the north by Flamborough Head, and in the east, the Smithic Bank breaks the worst of the seas. It also enjoys attractive coastal scenery. But the advantage which Bridlington has in its sailing waters is not matched by the shoreside facilities of its harbour.

5.23 At the moment, Bridlington Harbour is predominantly a commercial harbour catering for the fishing industry. The revenue derived from pleasure craft represents less than 10% of the total harbour revenue, and it has progressively declined in real terms over the last decade. The lack of facilities for leisure sailors at Bridlington compared with other locations has resulted in a continuing loss of leisure craft to other locations, where modern facilities and 24 hours access to and from the sea are available. The availability of virtually full time access to the outer harbour for vessels drawing 1.5 metres or less would represent a very significant improvement for leisure sailors.

5.24 Because of its present lack of facilities and limited space for visitors, Bridlington cannot host major sailing events. For someone wishing to berth a boat at Bridlington, there is a long wait until an existing boat owner decides to give up his or her berth. Yet Bridlington offers an ideal location for a marina. At present, there is no proper facility for the port hopping cruiser between Lowestoft and Hartlepool. If access and proper facilities were available at Bridlington, they would be much in demand. Improved accessibility would also be a boon for the RNLI.

5.25 The consultant to the Royal Yachting Association ("RYA") on the provision of marina and mooring facilities confirms that the RYA view Bridlington as a very appropriate location for a marina development. In the RYA's unsuccessful 1999 funding bid to the Millennium Commission, Bridlington was one of the six key locations identified by the RYA for inclusion in the development of a network of safe havens for craft.

5.26 The RYA confirm that an attributable upsurge in local trade generally follows the development of a marina. Visiting craft would use Bridlington in substantial numbers, and should provide a significant contribution to the local economy.

5.27 The RYA also caution against the initial under provision of berthing facilities. Expansion after initial development can prove more costly and more intrusive than providing all necessary facilities in

the first place. The Council adduced expert evidence justifying a 500 berth marina. No opposing expert evidence was called by the objectors, who relied on the assertions of such as the Solicitor to the Commissioners, a person with no qualifications or experience in leisure consultancy. The Commissioners were themselves supporting the case for a marina of 500 berths until they decided to oppose the Council's Orders.

5.28 A marina at Bridlington would provide the catalyst for the regeneration of the town and its economy. The catchment area for Bridlington is considerable. A two hour drive puts Bridlington in reach from Boston in the south, through the Lancashire borders, to Hartlepool in the north. There is a significant shortfall of berths along the east coast. The most effective way of reversing the fortunes of a declining coastal town is by regenerating its harbour area, thus giving a focus to its traditional identity. The marina proposals contained in the Council's Works Order represent a massive improvement on existing facilities, access and safety.

5.29 The RYYC would give effective support to the promotion of the marina through an extension of its sailing programme, training, youth development, bidding for national and international sailing events for Bridlington. National sailing events could certainly be attracted. Such events would attract 400 to 500 visitors, including crews and families. Competition for international events is keen, but their attraction on an occasional basis would not be impossible.

5.30 The RYYC consider it likely that the vast majority of their current racing fleet would transfer to the marina in order to have the benefit of virtually round the clock access to berths and the avoidance of having to lie on a cradle or in mud, both of which involve increased maintenance costs.

5.31 A marina at Bridlington would mean that boats from the south of England and from the Continent could confidently expect to have access to the harbour, which is not the situation at present. The completion of the Forth-Clyde link opens up the whole of the east coast through to the west coast, an exciting prospect, which will add to the importance of Bridlington as a cruising location.

5.32 The Council have confirmed to the RYYC that boat owners who wish to retain a mud berth will be able to do so, because provision will be made within the existing harbour at a cost comparable to current costs.

5.33 The development proposal includes the opportunity for RYYC to move to premises within the marina, but this would not be free of charge. It would be on a commercial basis. The RYYC are not particularly committed to their premises being located on Work No 2 if this would cause any difficulty regarding the listed South Pier (Document SUP/20).

5.34 The Dinghy Section of the RYYC operates from Blyth Park at Wilsthorpe. It hosts national and regional class racing events, as well as managing its own race training at club level. It plays a particular part in introducing young people to sailing, and the impetus given to water sports by the creation of the marina would create a substantial opportunity for the enhancement of this role.

5.35 Just as the then local authority, Bridlington Corporation, showed foresight in purchasing the Sewerby Estate in 1934, which has proved to be an asset to the tourist trade of the area, so public investment in the proposed marina would be justified. The planned public investment would draw in both grant aid and private investment, which together would stimulate the economy of Bridlington and the surrounding area. Without an investment of this sort, the current decline of Bridlington would continue.

Written representations in support of the Council's Orders

5.36 Many of the written representations in support of the Council's Orders are in standard form, and add nothing to the arguments made by supporters who appeared at the inquiries. There are four additional points contained in the written representations, however:

- there is support for the development by some people living close to the site of the development, even though they recognise that they would suffer some disruption during the construction period

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- there is support for the proposal on the basis that it would create jobs in the area which might persuade young people to stay in the area rather than moving away in search of work or not returning to Bridlington after higher education
- there is some support for the proposal from people who live outside Bridlington, elsewhere along the east coast, and who see the proposal as offering a boost to the economy of a wider area
- there is some support from Council tax payers of the East Riding of Yorkshire Council who live outside the Bridlington area but who see the economy of Bridlington as requiring a boost.

6. The cases of the objectors to the council's orders

Objections to the Council's Orders were made at the inquiries by the Commissioners (the existing statutory harbour authority, whose property would be affected by the Council's proposals for compulsory acquisition), the Bridlington Protection Group (an unincorporated association with 422 members, formed originally in response to the proposal by the Council to build over the beach), the Byways and Bridleways Trust (one of the organisations prescribed under paragraph 10 (a) of Schedule 5 to the Applications Rules to receive copies of applications and documents) and thirteen individual objectors.

The material points are:

The Works Order

The proposed development would be contrary to planning guidelines

6.1 Paragraph 40 of PPG1 makes it clear that where an adopted or approved Development Plan contains relevant policies, Section 54A of the Town and Country Planning Act 1990 requires that an application for planning permission shall be determined in accordance with the plan, unless material considerations indicate otherwise.

6.2 The Council's proposals do not accord with the Development Plan.

6.3 Policy S4 of the Structure Plan (in which Bridlington is identified as an "urban centre") states that, where an urban centre is substantially bounded by good quality agricultural land or important amenity areas, planning permission will not normally be granted over allocations made in local plans for housing development on this land unless it is accepted by the planning authorities that its development is essential to meeting the housing provision for the District as set out in Policy S1.

6.4 Policy S1 provides that within the Council's area, in the period 1989 to 2006, land should be provided for 10,500 dwellings, plus a further 2,500 if a major tourist/leisure development at Wilsthorpe proceeds.

6.5 The Council have already allocated land for the appropriate level of housing development within their Local Plan. There is therefore no need to make further provision in the harbour, and that element of the Council's proposals is thus contrary to Policies S1 and S4 of the Structure Plan.

6.6 Policy E10 of the Structure Plan provides that tourist developments within built up areas and which are of a scale and type compatible with their surroundings will normally be permitted. The Council's proposed development is not of a scale and type which is compatible with its surroundings. In terms of scale, the proposals involve containing an area of water approximately three times the size of the existing harbour, and "reclaiming" land on a scale similar to the size of the existing town centre. In terms of character, the existing harbour has developed over many years in a pleasingly piecemeal manner, including many architectural styles. The new landside development may include small scale buildings, but its total mass would be considerable in relation to the buildings surrounding the existing harbour. It would have an adverse impact on the character of the harbour area, and is therefore contrary to Policy E10 of the Structure Plan.

6.7 Policy S14 of the Structure Plan indicates that proposals for shopping will normally be approved within existing shopping centres, provided that the scale of development is compatible with the size and character of the centre. The marina development would be outside the defined shopping centre at Bridlington. It would therefore be contrary to Policy S14 of the Structure Plan.

6.8 Policies En18 and En20 of the Structure Plan seek to encourage and allow recreation facilities, provided that they do not have an adverse environmental impact. The Council's proposals would have an adverse impact on adjoining land uses in that they would threaten the efficient operation of the

harbour and limit the potential for the reasonable expansion of the harbour. They are therefore contrary to Policies En18 and En20 of the Structure Plan.

6.9 Policy BRID 17 of the Local Plan makes provision for large scale tourism and leisure development at Wilsthorpe. The justification for the policy mentions that past proposals at that site have previously been prepared for marina development supported by high quality housing. It remarks that, with additional financial resources available from the EU, the marina development may still emerge.

6.10 On the other hand, Policy BRID 16 seeks to protect the operation of the harbour. It states that:

"Proposals which would threaten the efficient operation of the harbour or limit its potential for reasonable expansion will not be permitted. Proposals which would be likely to affect the harbour area will not be permitted unless they are directly related to the leisure and commercial activities of the harbour itself".

As stated in relation to Structure Plan Policies En18 and En20, the Council's proposals would threaten the efficient operation of the harbour and limit its potential for expansion. They are therefore contrary to Policy BRID 16.

6.11 Policy BRID 15 of the Local Plan provides that tourism development will be permitted on the sea front, which is designated as the area between Leisure World and the Spa. The Council's proposals extend beyond the Spa on land and also on the sea bed beyond the sea front. The policy also requires proposals to be compatible with the character of the surrounding area. The Council's proposals for a large topside development are not compatible with the historic character of the harbour and its surrounds. They are therefore contrary to Policy BRID 15.

6.12 Policy BRID 22 of the Local Plan states that proposals for new retail development will be permitted within the defined town centre. The Council has also identified key opportunity sites, where development would provide the greatest benefit to the central area. The site of the proposed marina is not within the defined town centre; nor is it identified as a key opportunity site. The shopping proposal is thus contrary to Policy BRID 22 of the Local Plan.

6.13 Policy EN13 of the Local Plan provides that proposals will not be permitted where they would adversely affect the site or setting of nationally important archaeological remains. On sites which are of local archaeological significance, proposals will only be permitted where full provision has been made for the protection, or where this is not practicable or justified, the proper investigation and recording of the site. The marina proposals have the potential to affect adversely known and potential archaeological remains at the harbour and beyond. These include, according to a desk based assessment carried out by the Humber Archaeology Partnership, the scheduled Ancient Monument at Dane's Dyke. In order to assess the impact of the marina proposals on archaeology, it is therefore important that additional predictive modelling is undertaken before any approval of the proposed development. Without this, the proposals are contrary to Policy EN13 of the Local Plan.

6.14 Paragraph 40 of PPG1 makes it clear that applications which are not in accordance with relevant policies in the Development Plan should not be allowed unless there are other material considerations which justify granting planning permission.

6.15 The Council argue that there are four factors which are material considerations which favour the grant of planning permission for their proposals. These are

- national planning policy
- regional planning policy
- supplementary planning guidance
- major public benefit by securing Bridlington's socio-economic regeneration.

6.16 PPG15 deals with listed buildings, and is mentioned at paragraphs 6.179 to 6.180 below. PPG17 (Sport and Recreation), PPG20 (Coastal Planning) and PPG21 (Tourism) were all published before the adoption of the Local Plan, and can therefore have been regarded as taken into account in the drafting of the Local Plan, which clearly considered it more appropriate to locate any marina at Wiltshorpe. In particular, paragraph 3.7 of PPG 20 states that *"When considering applications for marinas, local planning authorities should pay particular attentions to arrangements for access and parking. Any associated development should be assessed separately, on its own merits, taking into account whether it requires a coastal location."* The topside development in the Council's proposal does not require a coastal location.

6.17 PPG6 places significant emphasis on the role of town centres and identifies them as the preferred location for retail development. Paragraph 1 of PPG6 underlines that the Government's objectives are to sustain and enhance the vitality and viability of town centres.

6.18 Whilst the town centre of Bridlington performs reasonably well, it is a vulnerable centre because so much of the shopping provision is geared towards a declining tourist trade. That decline also impacts on local residents who derive their livelihood from it, and who are the year round customers of Bridlington's shops.

6.19 The opening of the Promenades shopping centre in the mid 1990's improved the representation of national multiples in Bridlington, but the town still faces competition from the more comprehensive retail provision in Beverley, Scarborough, Hull and Hornsea.

6.20 A retail study undertaken by England and Lyle in September 2000 concluded that, whilst there was limited capacity for additional convenience floorspace in Bridlington town centre, there was scope for a greater amount of comparison shopping. The report noted that the town centre would benefit from some further small scale development, and that an improvement in the quality of shopping was needed to stem some of the leakage of expenditure to competing centres. The provision of retail floorspace at the proposed marina, and outside the defined shopping area of the town, would be inconsistent with the findings of the retail study, and would not address the retail needs identified in the report.

6.21 England and Lyle identified a potential retail development area within the designated town centre, and two further areas on the fringes of the town centre, but they do not make any mention of the marina location as a possible site for retail development.

6.22 Given the trading conditions of existing businesses in the town centre, any diminution in their turnover as a result of competition from retail floorspace at the marina could be detrimental to their ability to keep trading.

6.23 Unless it would be genuinely ancillary to the marina use, the inclusion of retail floorspace in the proposed marina location is inappropriate. There would not be sufficient uses genuinely ancillary to the marina to take up all the retail floor space proposed by the Council. Nor would retail units which were genuinely ancillary to the marina be able to trade on a viable basis all the year round.

6.24 Both the draft regional planning guidance (Document ERYC39) and the approved guidance which emerged during the inquiries (Document ERYC39A) make no specific proposals for the Bridlington marina. Indeed, both make it clear that tourism development should be guided by the Development Plan process.

6.25 Not surprisingly, the marina proposals do accord with the SPG issued by the Council. Paragraph 3.16 of PPG12 suggests that substantial weight should only be given to SPG, however, if it derives from and is consistent with the Development Plan. This SPG is not, and little weight should therefore be given to it. Paragraph 3.17 of PPG12 warns that SPG must not be used to avoid subjecting to public scrutiny proposals which should be included in the Development Plan. That is precisely what the Council are attempting to achieve in this case. The scale of the development is such that it should be properly examined through the Development Plan process.

6.26 In themselves, the construction of the breakwaters, quay walls and locks would do little to regenerate Bridlington. The number of jobs created by these works would equate only to about 50. Even that advantage would be off set by the need to close the small businesses along the promenade beyond the Spa during the construction phase and by the impact on tourism employment in Bridlington during that period. The works which would be authorised by the Works Order are estimated to take 30 months. The construction of the topside works would take a further seven years, even if development proceeded smoothly, with no difficulty in obtaining finance, appointing a developer, obtaining all necessary consents and implementing the project. Major civil engineering projects often encounter unforeseen problems, run late and exceed their original budgets. The impact of a ten year construction period on the tourism economy of the town could be seriously adverse.

6.27 Once constructed, it is difficult to understand how the presence in the town of a relatively small number of boat users, particularly in the early years, could bring about the socio-economic regeneration of Bridlington.

6.28 It is therefore difficult to see any material consideration justifying the grant of planning permission.

6.29 The intensity of development proposed, in relation to housing, retail and commercial development, is less in the Council's statement of case than was envisaged by the ES. Without details of the land uses associated with the marina development, it is not possible to determine whether the land proposed to be reclaimed within the marina is excessive.

Response of the Council to alleged non compliance with planning guidelines

6.30 The Development Plan as a whole presumes in favour of the development proposals. The highest the objectors can put their case on the Development Plan is to argue conflict with one of the criteria within a criteria based policy. That does not amount to conflict with the Development Plan. There are parts of the Development Plan that pull in different directions, and it is the position overall that leads to a judgement of compliance or conflict.

6.31 As at October 2001, future housing land availability in Bridlington was sufficient for 1,744 dwellings. The housing completion rate in the town was around 200 dwellings per year. About 900 of those spaces would therefore be used between 2001 and 2006. There would thus remain identified space for the construction of only some 800 dwellings after the Structure Plan period, the equivalent of four years' supply. The limited residential development envisaged for the marina would contribute a valuable windfall brownfield site in accordance with PPG 3. Approaching the end of the Structure Plan period, it would reduce the loss of further greenfield sites on the periphery of the town. The great majority of the sites currently approved and awaiting development (sites for 1460 dwellings) are on peripheral greenfield sites (as shown in Document APP/156).

6.32 Housing at the marina would be within the development limits of Bridlington shown in the Local Plan. It would clearly be "*compatible with the size and character of the urban centre*", as described in Policy S4 of the Structure Plan. Whilst land reclamation from the sea does not conform strictly to official definitions of brownfield development, that proportion of the housing which would be developed on part of the existing harbour does meet that definition. Development on reclaimed land would reduce the need to take agricultural land.

6.33 The Council's proposals would create jobs, help to lengthen the tourist season, attract more people and spending to Humberside and benefit the local community. They therefore comply with Policies E1 and E10 of the Structure Plan. The scale of the Council's proposals is similar to that of proposals brought forward in the past by the Commissioners. A marina project would not be other than on a substantial scale. A smaller scale development would not cost much less, but would achieve much less in terms of benefits.

6.34 The policies on shopping are not directly engaged, because there is no planning application for retail development before the inquiries.

6.35 Policy BRID17 of the Local Plan does not say that any marina should be located at Wilsthorpe. The policy makes allocation for a major tourism development at Wilsthorpe on some 80 hectares of land. This is not restricted to a marina, but covers a range of possibilities.

6.36 Policy BRID16 envisages reasonable expansion of the harbour. Whilst there is no express mention of a marina, the reference to long standing proposals in paragraph 14.56 of the reasoned justification in the Local Plan only makes sense in the light of the long standing proposals of the Commissioners, which all involved a marina together with land reclamation proposals.

6.37 Although a specific marina project is not referred to in Policy BRID 15 of the Local Plan, the Council's proposal is entirely consistent with this policy, which allows for new tourism development within the sea front area, provided it is compatible with the present surroundings.

6.38 As regards Policy BRID 22, it is accepted that the proposed scheme is not within the defined town centre, but it is immediately adjacent to it. There is currently no obvious opportunity for retail development within the defined town centre. The retail development envisaged for the marina would directly support the marina, as indicated in the development framework; but the market should be allowed to control the type of retail uses which take up the space, rather than this being limited by condition. In the medium term, the identified need for retail floor space in Bridlington established in the England and Lyle survey (Document ERYC 114) exceeds the amount envisaged in the Council's proposals.

6.39 The final location and design of the proposed works was not determined when the original desk based archaeological assessment was undertaken by the Humber Archaeological Partnership. The section in the ES (paragraphs 3.15 and 4.4.4 of Document ERYC 2) on archaeology were written after the siting and design of the new harbour was determined. Paragraph 4.4.4 confirms that no known site or historic land surface would be directly affected by the construction works. The Council have accepted the mitigation measures suggested in the ES to cover possible disturbance to unknown wrecks.

6.40 PPG 20 clearly envisages marinas in the sort of location promoted here. Paragraph 2.11 of PPG 20 states that *"The developed coast ... may provide opportunities for restructuring and regenerating urban areas, thereby improving their appearance and the environment."* The potential impact of the associated development has been assessed and would be acceptable.

6.41 The omission of specific mention of the marina in the regional planning guidance (Document ERYC 39A) is of no significance. There are no site specific proposals in the regional planning guidance. The marina is specifically mentioned in the regional economic strategy's action plan (Document ERYC 17).

6.42 Paragraph 3.15 of PPG12 confirms that SPG has a role in supplementing other policies in the Development Plan. The SPG in this case evolved as recommended in paragraph 3.16 of PPG12. Whilst it is not part of the Development Plan, weight should therefore attach to it.

6.43 It is not the case that the Council have tried, through the inquiries, to circumvent a review of the Local Plan. By incorporating into the Unilateral Undertaking (Document APP/247) a preparedness to incorporate specific recommendations made on design by the Secretary of State into the development framework, and to carry out the topside works in accordance with the development framework, a process has taken place through the inquiries which has been analogous to a Development Plan Inquiry, where the Council's proposals have been open to debate, scrutiny and recommendation back to it. The difference here is that the local planning authority would be bound to take account of the Secretary of State's recommendations.

6.44 While some disruption during the construction period is inevitable, there is no evidence to indicate that construction itself would be generally detrimental to local businesses or to tourism. During the reconstruction of the north and south promenades, good project planning ensured that disruption was minimised, and the works themselves attracted much attention and interest from

visitors. The construction works in this case would create a certain level of visitor attraction in their own right.

6.45 The addition of a small number of boat users would not alone achieve the regeneration of Bridlington. It is the mix and variety of initiatives proposed which together would produce a step change for the town's economic health and prosperity.

6.46 Work carried out by Ove Arup after the ES was prepared (Document ERYC 65) was incorporated into the Council's case for the inquiries. The Arup work reviews the market opportunities rather than simply the physical capacity of the site which would be delivered by the implementation of the Works Order. That is why the indicative figures for housing, retail and office development put forward by the Council at the inquiries differ from (and are smaller than) those assessed in the ES. The ES assesses the "worst case" scenario, in terms of maximum environmental impact. The development framework establishes that the land being reclaimed is not excessive for the level and standard of development sought.

The proposed development would be excessive in scale

6.47 A marina for 500 vessels is not required. Neither the marina at Grimsby nor that at Hull is full, and the marina at Whitby has only a short waiting list.

6.48 Bridlington only needs space for 150 or 200 boats, and the reduction in the scale of operation of the fishing industry in Bridlington Harbour means that a marina could be created within the harbour if some readjustment took place.

6.49 If the Council's scheme were not approved, the Commissioners would look into the possibility of providing a smaller marina within the harbour using a half tide sill.

6.50 That is a proposal which ought to have been addressed by the Council in any event. They should have started by considering a modest proposal to create a marina, and built on it only if the success of that work justified further investment.

6.51 Some of the facilities planned for Work No 2 would be very useful, but, if such a large structure were not built, there would be no need to fill it with facilities. The RYYC is ideally located at the moment. There is no obvious reason for it to be relocated into the Council's scheme. Nor is a Harbour Control Office on the scale suggested required next to the lock. The existing facilities for the Harbour Master and the watchmen are perfectly adequate. The Commissioners would wish to improve facilities for fishermen, but would do so gradually as funds permitted, respecting the new listed status of the piers. The Commissioners have currently submitted an application for listed building consent to replace two davits. This followed a request from the fishermen.

6.52 If the Commissioners suddenly had a large amount of capital available, they would not drastically change or replace the harbour.

6.53 The scale of development proposed for the reclaimed land is such that the highway infrastructure of Bridlington would be inadequate to cope with the additional traffic generated. In particular, South Marine Drive would provide an inadequate sole access to the whole development scheme.

6.54 The car parking proposed to be provided for the whole scheme would also be inadequate, increasing congestion in the centre of Bridlington.

6.55 Such a substantial scheme, taking ten years at best to be completed, would put at risk the future of Bridlington as a tourist resort. Existing visitors would select alternative locations rather than visiting Bridlington during such an extensive development period.

Response of the Council to the allegation that the proposed development would be excessive in scale

6.56 A marina of 500 berths is supported by the market assessment carried out by Ove Arup, which showed a lack of local facilities, when the waters of Bridlington are known for their quality and safety. A marina of that size would provide an engineering solution that could be constructed at reasonable cost. A marina of 500 berths is also an ideal size for efficient operation.

6.57 The RYYC bring their considerable experience to bear in supporting the case for a marina for 500 boats.

6.58 The Commissioners have promoted the same concept themselves, as can be seen from Documents APP/75 and APP/154. Their withdrawal from the scheme in 2000 had nothing to do with a preference for a half tide sill. Nor is there any mention of this in their letter of objection or in their statement of case. Nor does their resolution of 23 April 2001 commit them to any actual, immediate preparation of such a scheme. A half tide sill in the existing harbour would generate an increase in activity with a need for additional land based facilities, including car parking; but there would be no space to provide these facilities.

6.59 The suggestion that there is no requirement to provide any substantial new facilities for the fishermen is not borne out by the minutes of meetings with the harbour users (Documents APP/169 and APP/170). It is clear that they want to see a fish market, chilled storage facility, increased holding tanks, and warehouses with access for a fork lift truck, so long as they do not have to pay anything extra for them. At a meeting on 27 December 2001 (Document APP/153) the fishermen recognised that existing facilities are substandard, and that, if new facilities were not provided to modern standards, the industry would fail.

6.60 The additional traffic which would be generated by the marina has been shown to be within the capacity of the existing highway network. South Marine Drive currently operates at 40% to 50% of its design capacity even in the peak summer period. Heavy goods vehicle movements on South Marine Drive during construction would only amount to 8 or 9 two way movements per day.

6.61 The provision of car parking for the marina would comply with Yacht Harbour Association guidelines. Nobody has suggested any other guidance as being appropriate. The integration of the parking proposals with public transport initiatives is in direct accordance with the approach advocated in PPG 13.

The proposed development would be inappropriate in location

6.62 A marina at Bridlington, created beyond the limits of the existing harbour, would be only the second marina in the UK to be built directly into open sea. With one exception, other marinas have been built on estuaries or in disused harbours or docks, where the initial capital outlay has been much less. The only existing example of a marina built into open sea in the UK is Brighton Marina, which has had a difficult financial history.

6.63 A smaller marina could be constructed within the existing harbour by creating a half tide sill between the Chicken Run Jetty and the Crane Wharf. This would allow yachts and small boats to remain afloat at all states of the tide at pontoons, with limited access and egress for two or three hours at either side of high water. The existing mud berths would also remain, as would the existing facilities for fishing boats.

6.64 If a marina at Bridlington needs to be built outside the existing harbour, there would be advantages in creating it to the east of the present North Pier, or alternatively much further south at Wilsthorpe.

6.65 A site to the east of the North Pier would be located in deeper water, which would allow genuine 24 hour access. It would not require a locked entrance. It would also be built on a chalk base, with fewer construction problems and a smaller requirement for ongoing dredging. Being closer to the

existing town centre of Bridlington, it would genuinely represent an extension of and a support to that town centre.

6.66 A marina at Wilsthorpe would offer the opportunity of a site with scope for substantial landside development, not in conflict with the Development Plan, creating a genuine additional all weather attraction to increase the number of visitors to Bridlington. It would avoid any problem for current users of Bridlington Harbour, and would avoid years of disruption to the town centre of Bridlington, its residents and visitors. It would also avoid the need to make changes to the listed Piers.

6.67 On the other hand, the Council's scheme involves the loss of 13 hectares of the best and most popular beach at Bridlington. The beach affected is always the first to be filled with people at popular times. The suggestion by the Council that there remains plenty of good quality beach to the south of the land affected by their development proposals ignores the facts that this stretch of beach is further away from the coach park and the railway station, further away from the town centre, and for many people further away from where they live or from where they stay on holiday. It is also nearer to the Yorkshire Water sewage treatment works.

6.68 It is not the case that the area of beach affected by the proposed works is rocky and covered by the sea for most of the time. The area nearest to the South Pier is wet for the longest period, and is covered before other areas of beach, but it is certainly not covered for most of the time. Nor is it barren. It is an area used by thousands of sea birds as the tide recedes, and rock pools and wet areas give pleasure to many people. Photographs at pages 34 and 35 of Document OBJ/P32 show how well used is the beach affected by the proposed development.

6.69 The Council's scheme proposes to take away an area of beach which can be used by everybody, and to replace it with a facility which in reality would be available and of interest to a few.

6.70 Good quality beaches should be retained and protected on a coastline which is suffering substantially from erosion.

6.71 The works proposed by the Council would also effectively undo the recent award winning refurbishment of at least a 550 metres stretch of the promenade between the South Pier and the southern limit of the development - 580 metres if the full limit of deviation were to be used.

Response of the Council to the allegation that the development would be inappropriately located

6.72 In the past, the Commissioners have always supported the concept of an outer harbour marina scheme, using the South Pier as the northern arm of the scheme. The design of the marina took as its starting point the earlier work which had been done, and then considered alternative locations. The marina feasibility study (Document ERYC25A and B) advised that the marina should be to the south of the existing harbour.

6.73 A half tide sill within the existing harbour would be capable of impounding an area sufficient to hold between 120 and 160 boats. The piling would need to be tanked or lined in order to avoid water loss. The work would cost between £3.5m and £4.5m. Access to and from the impounded area for keel boats would be restricted to a short window around high tide. Other boats with a shallower draught would have a longer window, but such restrictions would not be attractive to keel boats. Construction of a half tide sill would create a reflective boundary to incoming waves, exacerbating existing conditions in the harbour, and making mooring alongside the fish quay more difficult.

6.74 Positioning the marina to the north of the existing harbour would result in increased interception of the sediment movement from north to south, with an adverse impact on the stability of the south beach. It would also alter tidal currents, leading to sediment being diverted further offshore, and it would reduce water quality along the south beach. It would also be nearer to, and have adverse consequences on, the Flamborough Head cSAC.

6.75 A marina at Wilsthorpe would not deliver the benefits to the town centre which would arise from the Council's proposal, and would therefore not help to regenerate Bridlington. A marina at Wilsthorpe would also generate additional journeys, and not represent sustainable development.

6.76 While there would be some loss of beach to the development, the area affected is not available for continuous use, because the tides cover most of it twice every day. The area concerned is not part of the main tourist beach, and it remains wet for longer than other parts of the south beach as the tide ebbs. There would remain an extensive area of beach further south, and it would be the Council's intention to extend the "Tidy Britain Group Beach" to this area to attract tourists to it.

6.77 The south promenades would not be lost to the public. While access might be restricted to parts of them during construction, on completion of the work, full access would be restored and any damage repaired. In addition, in the longer term there would be further areas of high quality open space within the proposed development to which the public would have access. The high quality of design achieved in the reconstruction of the promenades will be matched or exceeded in the development of the marina.

The proposed development is defective in design

6.78 The proposed new entrance to the marina and harbour would involve coping with sea conditions much more demanding than those in the present harbour mouth, because the entrance would be further to the south. It would be in deeper water, and would enjoy the benefit of being in the lee of Flamborough Head to a lesser extent than the present harbour entrance. This loss of the shelter of Flamborough Head would apply particularly when winds are north or north easterly. There would also be problems when the wind is blowing strongly from the south west, since turbulent water would be caused by the back send off the two breakwaters whenever there is a swell or winds of force 5 upwards.

6.79 The design would not prevent the Canch reforming at the end of the eastern breakwater, so there would be a need for repeated dredging in that location. A wider harbour mouth would not have water passing through it with the same pressure or force, so it would silt up more readily. This could cause significant operational problems, restricting free access, and could result in the fishing fleet losing more fishing days than at present in the winter months.

6.80 Dredging in the proposed outer harbour in order to keep clear access to the lock would also pose a potential danger to the foundations of the existing harbour piers, as would the flow of water from the lock itself. The increased depth of water would allow larger, steeper waves to attack the dredged slope, which would retreat until the pier foundations were undermined.

6.81 In fact, the amount of dredging required by the design would exceed the 20,000 tonnes presently allowed to the Commissioners for sea disposal in the immediate area under their existing licence. Total annual sedimentation of the proposed marina and harbour is estimated at 34,000 tonnes per year (based on the limited data available and with no modelling of waves or currents).

6.82 The design of the proposed works would involve the use of a considerable quantity of rock armour, which would bring with it many problems.

6.83 The spaces between the rock armour at the northern end of the eastern breakwater, where it joins the existing North Pier, could be filled with sand swept in by the sea. This could lead to waves sweeping over the rock armour in rough seas and closing the entrance to the existing harbour.

6.84 The use of rock armour on the seaward side of both breakwaters and at both sides of the entrance channel to the marina would also create a danger for any vessel losing power in the vicinity of the harbour entrance. It would be driven on to the lee shore, which would comprise rock armour. A vessel hitting rock armour with force would probably be holed below the water line. Such a vessel would be likely to founder within the outer harbour, because there would be no readily available beach where it could quickly run aground. It would also be difficult to evacuate the crew over rock armour. A vessel hitting the smooth, near vertical face of the existing piers might receive a heavy and damaging blow on the topsides, but this would be unlikely to result in the vessel sinking in the fairway.

6.85 Document ERYC 50 (Section 3.1, paragraph 2) states that the current design of the breakwaters would result in some over topping. Rock armour on the lee slope of a breakwater is vulnerable to displacement due to over topping. It would be extremely difficult to tell if rock had been displaced from the rock armour. Any rock displaced could find its way into the channel. A rock in the channel would be unlikely to be discovered until it was hit by a vessel, perhaps causing significant damage.

6.86 The proposed design would include almost 1.7 kilometres of rock armoured breakwater, with the crest being some 3 metres above mean high water springs. There would thus be a very large volume of rock armour that would not be regularly immersed by the tide. Rock armour which is not regularly submerged can and does become infested with rats, particularly where there is a ready source of food, such as discarded remnants of take away meals, unused fishing bait or the detritus from commercial fishing.

6.87 Rock armour is also an attraction for children, but it provides a dangerous location for children's play. The length of rock armour proposed for what would be the new northern boundary of the south beach would cause particular concern as a dangerous place for children.

6.88 The infilling of the west end of the harbour by Work No 6 would increase problems of surge and backsend within the existing harbour by reducing the area in which surge is able to dissipate.

6.89 The proposal to move small boats to the north side of the Chicken Run Jetty would not be viable because of the flow at times from the Gypsy Race. The Commissioners have tried to reduce the impact or to alter the course of that flow, but without success. The Gypsy Race cannot be piped under the Chicken Run Jetty, because the level of mud under the Chicken Run is some 1.5 metres higher than the bed of the harbour where the Gypsy Race exits the new Clough Hole infill, and the mud cannot be cleared under the Chicken Run without damaging the foundations. Thus up to 60 private craft currently berthed in the harbour would have no viable replacement berth.

6.90 The deposited plans indicate that the existing South Pier would have to support lateral thrust from the reclaimed land. There would be a small section of reclaimed land to the north of the South Pier, but the bulk of the reclaimed land would be to the south of the South Pier. There would be differential lateral pressure on the South Pier, and this gives rise to concern about differential vertical settlement.

6.91 There is boulder clay beneath both the South Pier and the sand of the south beach. Putting a considerable depth of fill on what is now the south beach, would cause the clay beneath it to be compressed. As the clay compressed, the southern face of the South Pier would settle. The northern face of the South Pier might also settle, but it is probable that the southern face of the pier would settle by more than the northern face. This is a force for which the pier was not designed.

6.92 The South Pier has dressed sandstone block outer walls with a chalk rubble core. The sandstone outer walls are reinforced with a cemented rubble chalk backing, bonded to the sandstone outer skin with header blocks. The two outer walls are bonded together at intervals by cross walls or diaphragms to improve the integrity of the structure as a whole. The cross walls are also constructed from chalk rubble set in cement, and they have wrought iron tie rods built into them.

6.93 If there is differential settlement of the two faces of the South Pier, the movement would be likely to fracture the cross walls. The wrought iron tie rods are protected when they are embedded in concrete, and their rate of corrosion is very low. Any fracture of the cross walls could break the bond between the ties and their protective surroundings. If this were to happen, the ties would corrode very rapidly. The skin walls could then become separated from the outer sandstone, with a dramatically adverse effect on the strength and stability of the South Pier.

6.94 Any water movement through or under the South Pier would exacerbate stability problems. It is possible that there is a spring beneath the South Pier. This would account for the high water pressure found within parts of the structure, the localised upward movement along the pier, and the existence of a drain hole through the outer skin of the pier. If the proposed marina is built with fill placed against the face of the South Pier, then high ground water within the fill may well, given the

possibility of differential settlement, lead to the possibility of a sudden and unpredicted collapse of the pier. The root cause of local failures of the South Pier foundations has not been fully identified. This action should be taken before any works are carried out adjacent to the South Pier.

6.95 Craft without motor power would need to be towed out through a potentially congested marina and through the lock. Once through the lock, a vessel leaving the marina would need to turn through 180 degrees, potentially at a time when other vessels will be seeking to pass in order to enter the existing harbour. There could well be a dangerous congestion of pleasure craft and commercial craft in the entrance channel outside the lock. In effect, two harbours would be using one entrance. This would be a particular problem when a boat without motor power was seeking to leave the marina against a wind from the south west at the same time as other vessels were entering the harbour. There would be a need for the sailing boat to tack out of the harbour entrance, potentially crossing the course of the vessel entering the harbour. Power gives way to sail, but it takes time to take way off a large vessel, and there is thus the possibility for urgent evasive action to need to be taken in a channel bounded by rock armour at both sides.

6.96 The design of the proposed works would increase the time taken by vessels using the existing harbour to reach and to return from the sea. The new entrance would involve an additional journey of about 480 metres in each direction to and from the existing harbour.

6.97 Whilst the facilities for fishing boats at present appear to be spread around the harbour, this allows fishing vessels to move to whichever of the facilities they wish to use and to tie up alongside. Bringing facilities together would be helpful, but only if the possibility of mooring alongside the facility being used remained. This does not appear to be possible in the plans as drawn. The fishing vessels use a great deal of equipment, much of which is cumbersome and heavy, and cannot easily be loaded or unloaded across other vessels. There is also a need for substantial space on the quayside to lay out pots or nets.

6.98 The infilling of the west end of the harbour by the proposed Work No 6 would take away a useful facility to repair both vessels and nets on an area over which they can be dragged out. The proposed development would make no provision for boats to be repaired without being lifted out of the water at additional expense. The Council's proposals to move the hoist into the marina would also mean that fishing boats would have to go through the lock into the marina in order to be lifted out for repair or maintenance.

6.99 It is critical to the condition, and therefore to the sale value, of lobsters that the tanks in which they are kept until collected are regularly fed with fresh supplies of clean sea water. At present, these tanks (located on the South Pier) are supplied with water pumped directly from an intake on the seaward side of the pier. No provision is made in the design of the proposed scheme to replace this supply, either during construction (when the water would be likely to be subject to increased turbidity) or in the longer term (when the land south of the South Pier would have been infilled).

6.100 Part of the Council's proposed topside development involves housing use. This would not sit happily beside the commercial activities of the fishing fleet, which often involve departure or landings during the night. The preparation and storage of bait can also give rise to smells. Commercial fishermen would not wish to have their activities restricted by the introduction of housing or hotel uses to the harbour area, or by any limitation on access during the night arising from the need for security in the marina area.

6.101 The Environment Agency have recently warned local planning authorities about the danger of permitting residential development on flood plains. It is therefore surprising that the Council are proposing to create a platform on which houses can be built above the sea. The North Sea can be very violent. Gale conditions affecting the residential and commercial properties for which the development platform would be created would put life and property at considerable hazard.

6.102 The design of the proposed works would not provide sufficient car parking for the scale of the uses proposed. Parking would need to be provided for all the residential and commercial units, but also for the marina and for existing harbour users. Boat owners in the marina would expect to be able

to park in the marina. A park and ride facility at Carnaby would have no attraction for boat owners either when arriving at the marina with gear and provisions or when returning to the marina after sailing. Boats could arrive at any hour, and transfer to the park and ride would thus need to be available 24 hours per day. There would be significant costs involved in providing such a facility, and in providing security for vehicles and any boats left at Carnaby.

6.103 The proposals would prevent line fishing by local people and by visitors to Bridlington taking place from the two piers. This is an activity which is very popular with both local people and with visitors, many of whom come from a considerable distance to enjoy this sport.

Response of the Council to criticism of the design of the proposed development

6.104 The proposed new entrance to the marina and harbour would not place sailors in conditions which could not be managed. A north easterly wind does not blow frequently (as Document APP/107 shows), and, in terms of the effect on waves, there is less of a helpful impact from being in the lee of Flamborough Head south of the existing harbour entrance than there is from the effect of the Smithic Bank (as Appendix B to Document APP/183 shows). The new harbour would be much safer to enter in adverse weather conditions than the existing harbour. In winds of force 5 and above, most yachts would remain in harbour, allowing plenty of space for commercial vessels to align themselves and make a safe entry to the outer harbour.

6.105 Document OBJ/132 is an agreed statement by the expert witnesses on both sides regarding the reformation of the Canch. It is agreed that a Canch might reform off the end of the new east breakwater, but it would be lower than the existing Canch, roughly along the 2 metres depth contour.

6.106 Dredging in the outer harbour would be carried out by contractors using modern methods such as suction dredging and jet dredging rather than bucket dredging. This would avoid danger to the foundations of the existing piers. Wave heights at the existing piers would be within the inner harbour if the marina were to be built, and would thus be much lower than the height of waves currently meeting the piers.

6.107 Based on the existing dredging figures provided by the Commissioners, the estimated requirement for disposal of dredged material would be within the quantity allowed under the new disposal licence for the nearby licensed dumping ground (HU 015) of 20,000 tonnes. If the average quantity of material dredged from the harbour over the last ten years is used, rather than the information provided by the Commissioners, this would suggest that the total annual dredge would be 28,900 tonnes. This would be within the previous licensed amount for HU 015 of 30,000 tonnes, which has caused no problem for the Flamborough Head cSAC.

6.108 Rock armour has been tried and tested in many other marinas and breakwater structures in the UK and beyond. There is no evidence of danger to users as a result of its use. Wave action does not allow sand to fill the voids of rock armour. The breakwaters have been designed to withstand an overtopping event of 1 in 200 years. It would thus require an extreme event to dislodge any rock on the leeward side of a breakwater. Even then, if a rock were dislodged, it would not be thrown; it would roll down the face of the rock armour. It would therefore be extremely unlikely to end up in any part of the navigable channel. The rock armour structures would not extend sufficiently above the splash zone for rats to build nests. All harbour structures can be a danger to children. Rock structures are to be seen on many tourist beaches, as well as in harbours.

6.109 Surge and backsend within the existing harbour have increased since the infilling of Clough Hole. Far from increasing the problem, the Council's proposals would reduce it. If required, this could enable new moorings to be created. The improved facilities on offer at the new marina would, however, be attractive to existing berth holders, allowing them improved access to their vessels and to the open sea.

6.110 The mooring of vessels in the vicinity of the Gypsy Race can be accommodated by using tubular steel piles, coupled with floating pontoons. A pile located at the end of each pontoon would ensure that the pontoons do not swing in the currents from the Gypsy Race when it is in spate.

Pontoons are available that can rest on the mud when the tide goes out. The diversion of the Gypsy Race could be accommodated by the use of training walls, but this would not be necessary with mooring piles providing robust berths.

6.111 Detailed assessment of the effect of the proposed works on the two existing piers have been carried out (Document APP/165). They do not suggest any cause for concern regarding settlement. Detailed monitoring of the existing structures would take place during construction. If movement were found to be occurring, remedial action such as pressure grouting or infilling would arrest it. After the works were completed, the South Pier would be better protected from the impacts of the sea. The South Pier has been designed to stand in tidal waters. Water already flows beneath it. Water flowing out of the fill material during construction would primarily pass through a sluice to seaward. In the permanent situation, ground water would flow along the easiest routes, as it does now. The possible effects of this natural phenomenon on the South Pier would be very small indeed compared to the existing potential for damage by storm weather and the sea.

6.112 Fleets of unpowered racing yachts leaving the marina should normally be accompanied by safety vessels which would be capable of towing vessels clear at the locks if necessary. It would be normal practice to create berths for these vessels adjacent to the lock, in order to speed access through the lock to a waiting pontoon, where sails could be hoisted in clear water. An experienced lock keeper could maximise lock occupation and, using mitre lock gates, could quickly adjust water levels. The 180 degree turn required at the lock would be similar to the existing situation, but with greater space for manoeuvre. The proposed new entrance to the harbour would be more than twice as wide as the existing entrance, which would make it easier to navigate in rough seas. The rock armour breakwaters would also absorb more of the incident wave energy than the existing piers. The outer harbour entrance would be wide enough to allow separate channels for new and existing traffic if that were considered to be necessary.

6.113 All fishing facilities would be replaced with improved arrangements. They would include bunkering and slipping facilities, and also access to the hoist without conflict with the car parking area as often applies at the present time. If a slipway or drying area is necessary, it could be included in the scheme, although it is accepted that no such provision is shown on the existing drawings, and no mention of the provision of such facilities has been made in meetings with the harbour users. It is a matter of minor detail.

6.114 The contract for the works would include a clause to require the provision of fresh seawater to the lobster tanks. The scheme design would take account of the requirement for a permanent supply, either from a pipeline running under the southern breakwater or from a pipeline running under the eastern breakwater.

6.115 Criticism of the juxtaposition of uses is misconceived. The development framework only sets out a possible mix of uses. The illustrative layout shows the main residential areas between 200 metres and 500 metres from the new fish quay. Proximity of such uses in any event works perfectly acceptably at other harbours, such as Eastbourne. The proposed hotel site is more than 400 metres from the commercial fishing harbour. This level of proximity does not seem to cause problems for existing hotels.

6.116 The Environment Agency expressed themselves satisfied with all matters of concern to them, and withdrew their objection to the Orders before the opening of the inquiries. There is thus no basis to suggest that the Agency would not allow building on the reclaimed land.

6.117 The design provides sufficient car parking. The park and ride at Carnaby is not intended purely for the marina development, but also for day trippers, short stay visitors and the conference trade.

6.118 The design of the proposed marina has been the responsibility of Posford Duvivier. They have a wealth of experience in marina projects (listed in Document APP/205). For the objectors, only one witness has practical experience of designing sea defence structures. That experience is very limited. Posford Duvivier have previously worked for the Commissioners. The Commissioners were still supporting the marina project when Posford Duvivier were appointed by the Council in November

1999. The Commissioners made no objection to that appointment. The design was developed in consultation with harbour users, including the Commissioners, who were represented by the Harbour Master.

6.119 When work authorised under the Works Order was completed, line fishing from the North Pier would be unaffected. Line fishing from the South Pier would be replaced by fishing from the quay wall within the eastern breakwater. It might also be possible to create fishing platforms along the breakwaters.

The proposed development would not deliver the benefits claimed

6.120 The development proposed by the Council would not create a marina or a harbour which would be open to all anticipated users for 24 hours per day. Access would only generally be available for three and a half hours either side of high water (that is for 14 hours per day, because at Bridlington there are two full tidal cycles per day). International racing events would therefore not be drawn to Bridlington as a result of the proposed development, because they require a harbour with 24 hour access.

6.121 A marina at Bridlington would not attract sufficient boats to use 500 berths. While marinas of that size were considered in the past, the number of boats currently berthed at Bridlington has reduced since then. There are now more places to berth a boat, and owners are prepared to travel further by car to a berth.

6.122 Although Bridlington Bay provides an excellent venue for day racing, it holds few attractions for cruising yachtsmen. To the south, the nearest port is Grimsby some 50 miles away. Like Bridlington, it is only accessible at certain states of the tide. The first all tide ports are at Great Yarmouth and Lowestoft, some 24 hours sailing away from Bridlington. To the north, Scarborough and Whitby are relatively close, but there are tidal overfalls around Flamborough Head which can be dangerous for small vessels in strong winds against the tide. In such conditions, it is necessary to keep some two miles offshore. This means that it is often necessary to leave Bridlington and to pass round the southern end of the Smithic Bank before turning north.

6.123 For long distance cruising, it is difficult to see what benefits Bridlington can offer, either as a starting point or as a port of call. For destinations in Norway, Sweden or the Baltic the outward trip would have the prevailing south westerly wind almost dead astern, while the return trip would be straight into the prevailing wind. Both conditions make heavy demands on a crew.

6.124 As a cruising base, Bridlington cannot compare with south coast marinas, from which boat owners can cruise to Normandy or Brittany. It is known that Hartlepool, further up the north east coast, has found it necessary to reduce harbour dues in order to attract more boat owners to take up berths.

6.125 Whilst it may be that more day racing events would be attracted to Bridlington by the marina, it is likely that only a minimal number of the boats taking part in an event would be based at Bridlington. Perhaps as many as 80 of the 100 or so boats taking part in an event would arrive by road. Facilities for parking up to 80 trailers would not appear to exist within the proposed scheme without a serious restriction on the car parking proposed to be provided.

6.126 Quite apart from the difficulty of attracting new boat owners, the proposed development would run the risk of losing from Bridlington some owners whose boats are currently berthed there. The 92 mud berths in the existing harbour would be lost, and it is estimated that only about 30 of the people taking up the mud berths at present would transfer into the marina. The remaining 60 or so boat owners would be likely to move from Bridlington. There would be no place for them in the harbour, and they would be unlikely to be prepared to pay the fees involved in using the marina.

6.127 The marina at Bridlington would only attract boat owners during the sailing season, which runs from May until September. Even during those months, boat owners would not contribute substantially to the economy of the town. Visiting yacht owners would make themselves at home in

the Yacht Club rather than using the facilities of the town to any extent. They would also buy provisions at home, from shops they use all the time, rather than buying from shops in Bridlington.

6.128 Construction contracts for creating the new marina would go to companies from outside Bridlington. There is no locally based company which could compete for work of this scale. Thus the bulk of the construction jobs would also be taken by people from outside the area. Many of the jobs created in the longer term by the development would be part time and seasonal. The relatively small net number of new jobs created does not justify the massive public investment involved. In fact the development could cost jobs in Bridlington, because the disruption caused by the ten year construction period could prejudice the town's existing tourist trade, putting existing jobs at risk.

6.129 Most of the jobs which could be created in any new shops, offices or hotels in the development could be created elsewhere in Bridlington without causing the disruption and damage to the beach which the proposed development would entail. There are sites within the existing town centre which could be developed for these purposes without taking the best beach. The development of those sites would create the same jobs without causing the same damage to the existing town centre by potentially drawing trade from the town centre to the marina. The marina itself would create very few jobs - the Economic Impact Assessment speaks of 14 jobs being created; but the Council's case is that the marina could be run by the existing harbour staff.

6.130 In 2001, Bridlington was very busy. The Council's Tourism Manager was reported as saying that the town had had no vacancies, and that takings on deckchair hire and the land train had broken all records. He said, *"We are starting to reap the benefits from the investment in the resort over the last ten years"*. The Head of Economic Development, referring to the refurbishment of the promenades and the work at Clough Hole, said that these improvements gave Bridlington one of Europe's best sea fronts.

6.131 It is questionable whether the development of a hotel would bring any further conference trade to Bridlington. There are existing facilities at Scarborough, some 29 kilometres north of Bridlington, developing facilities at Hull, 45 kilometres to the south, and a world class conference venue at Harrogate, only 98 kilometres away.

6.132 Far from building on that investment, the proposed development would put it at risk, by tearing up parts of the refurbished promenades and turning the harbour and the sea front into a long term building site. A programme of building lasting up to ten years would not generate tourist visits. It would dissuade existing visitors from returning, and damage the existing level of tourism income achieved by Bridlington.

6.133 The proposed development would make no inroads into the problems facing Bridlington which the Council have identified. It would have no impact on fish stocks in the North Sea. It would not reduce drug abuse and associated crime. It would not reduce multi occupation of residential properties. It would not improve Bridlington's deteriorating urban fabric. It would not address educational under achievement. It would make no change to the age structure of Bridlington's population. It would have very little effect on the scale of Bridlington's unemployment, and even less effect on the seasonal nature of the employment available in the area.

6.134 The Council claim that the marina project will diversify Bridlington's appeal as a tourist destination, appealing to higher socio-economic groups, rather than the lower spending visitors who choose Bridlington at the moment. In fact, the project proposes to sacrifice the greatest attraction to visitors who do come to Bridlington (the beach) in an attempt to attract those who can afford to go elsewhere, and might well continue to do so.

6.135 There has been no effective and thorough market survey to gauge the likely take up of berths in the marina. The 200 responses from berth holders obtained in a telephone survey and mentioned in the report (Document ERYC 30) by Coopers & Lybrand in 1987 have been repeated without question by other consultants engaged since then. Document ERYC 65 concedes that, of a total of 1,655 berths at marinas in the north east, some 353 were vacant in 1999. There is not one entry on a waiting list for a marina berth at Bridlington. There is not one application for a shop or an office, or even for a

house on the proposed landside development. There is no evidence that housing on the marina would sell. Property prices in Bridlington are low. There is no demand for expensive property. There is not even a proposed developer in sight. None of the various consultants engaged by the Council has unequivocally recommended that the marina project should be pursued.

6.136 There has been no risk assessment by the Council of the marina project. This was remarked upon in the July 2000 report of the Improvement and Development Agency for Local Government (IDeA) (Document APP/129), paragraph 117). The IDeA team said that risk assessment should be carried out because *"the Council needed to be sure that it (the marina project) would deliver the results intended"*. There was a specific recommendation that risk assessment should be carried out for the marina project (recommendation 13, page 20). In their response to the IDeA report, the Council said in May 2001 that *"a review by external consultants has been commissioned to determine the mechanisms which need to be put in place for risk assessment of all major projects."* They also said that *"Risk assessment specialist consultants have been employed to report on the Yorkshire Marina and advise on engineering issues, environmental assessment and economic impact assessment"*, yet no risk assessment evidence has been produced to the inquiries.

6.137 One of the issues a proper risk assessment would need to address is the possibility that grants paid to the Council for work carried out, for example at Clough Hole, might need to be repaid if that work were effectively undone by the proposed development.

6.138 The marina would not produce enough income to be self supporting. On the optimistic figures produced by the Council, it would not break even until year 6, and that is without making any provision for the repayment of capital. Hull Marina loses money. The local authority there had to write off £436,000 of losses in 1998, before the take over of the marina by British Waterways. Yet Document ERYC 25B suggests that a marina at Bridlington would attract some 150 boats from Hull in its first two years of operation, which would leave only some 40 berths taken at Hull.

6.139 Whilst the Commissioners currently operate the harbour at a profit, they do not have to fund a loss making marina. The proposed new Authority would have to run the marina. In an attempt to balance the books, they would obviously need to consider increasing harbour dues. This is something which the Commissioners have not done for almost 25 years. The only other possibility would be for the Council to continue funding the new authority, which would mean that it became a drain on the Council's resources. Operations in which the Council are involved tend to lose money. Examples are the Spa, Leisure World and the Sewerby Hall and Gardens

6.140 The development proposed should be allowed only if the benefits claimed for it can be guaranteed beyond reasonable doubt. This has not been demonstrated. But once the development which would be authorised by the Works Order had been carried out, it would be irreversible, whether or not any benefit accrued; and some of Bridlington's major assets would have been lost forever.

6.141 The money which the Council has available, plus any grant aid it can attract, would be much better spent on creating some all weather attractions for Bridlington which could be used by all potential visitors throughout the year, and on improving access to the motorway network. This approach would do much more to extend the visitor season and to attract additional visitors.

Response of the Council to the allegation that the proposed development would not deliver the benefits claimed

6.142 The marina has not been put forward as a development with constant access for all craft. There would be, however, substantial improvement of access for all users. Efficiency of operation both for the working fisherman and for the recreational sailor would be considerably greater. The depth proposed to be available at the access to the new harbour and marina is within the parameters of the dredged depth at other harbours on the east coast (as shown in Document APP/192) and the dredged depth at other successful yacht harbours (as shown in Document APP/193). The chance of attracting international racing events would represent a very occasional bonus. Bridlington would have comparable access to harbours which presently attract national events.

6.143 No evidence has been produced to challenge the financial viability or difficulty of attracting 500 boats to the marina. Doing nothing in response to the present situation would lead to a further decline in Bridlington's fortunes. There is a shortage of moorings on the east coast, and, indeed, a shortage of moorings nationally. Sailing is a growing sport. The marinas at Hull and Grimsby have access restrictions, and boat owners there clash for water space in the Humber Estuary with commercial traffic. A berth at Bridlington with easy access to Bridlington Bay would represent an attractive alternative to the tidal flows, sand banks and commercial traffic of the Humber Estuary. Boat owners living in the north, who currently berth their boats in the south, could also be attracted to move them to Bridlington for easier road access and the opportunity to sail or race more often. It is also the case that Bridlington would become an attractive base for power boat owners resident in the region and for people interested in power boating as a result of the construction of the marina.

6.144 Even some members of RYYC keep their boats away from Bridlington at present because they do not want to have them mud berthed or cradle berthed. If a retained water area were available in a marina, this would not be an issue.

6.145 Most yachtsmen are attracted to day sailing and racing rather than cruising. Bridlington would be an ideal base for leisure sailing of this sort. Many owners derive much pleasure from using their boats as holiday homes, enjoying the ambience of their chosen harbour or marina, and only venturing to sea for a few hours occasionally. For the more adventurous, however, Bridlington would become an effective harbour on the east coast, encouraging the movement of yachts north from the Humber to Hartlepool, the Tyne and on to the Forth.

6.146 The improved facilities on offer at the new marina should prove attractive to existing mud berth owners. But the wave climate within the existing harbour would be improved by the proposed works, and, if required, this would enable replacement mud berths to be created.

6.147 Sailing and power boating are now year round recreations. Competitive yachtsmen now enjoy year round regattas themed on seasons. There are winter sailing seasons in Hull, Grimsby and Hartlepool. Power boaters, too, will use their boats in winter, given the right weather conditions. But even if it is the case that sailing would not take place all the year round, boats have to be maintained and much of this activity takes place during the winter. Moreover the land side development, such as the housing, the hotel and the refurbishment of the Spa, would have longer term and year round impacts on visitor numbers and commercial confidence.

6.148 While some owners would no doubt wish to take advantage of the facilities offered by the RYYC, others would prefer independence. Many owners, particularly those with families, would enjoy the alternative tourist and leisure facilities offered by the town of Bridlington.

6.149 Community capacity building is taking place already to ensure that local people are equipped with the necessary skills to take maximum advantage of the employment opportunities which would be generated by the scheme.

6.150 Extra people brought to Bridlington would deliver extra trade to Bridlington. This would be true of yacht owners, but also of additional residents in the houses built as part of the scheme, additional conference visitors and additional tourists attracted by the development. All would provide a basis to strengthen the economy of the whole town.

6.151 Whilst Bridlington has sufficient bed spaces at present to meet the total demand in terms purely of numbers, the town does not have enough high quality en suite serviced rooms. Nor does it have a hotel with more than 48 rooms, which is a constraint for the conference trade. If that constraint were removed, it could extend the Bridlington season.

6.152 Improving the Spa without building a new hotel would not deliver the same degree of benefit. The hotel needs a site. There is no site for it without the Works Order. Alternative sites suggested for a hotel by the objectors would require site assembly with the probable need to use powers of compulsory acquisition. This would give rise to delay and continuing uncertainty.

6.153 Previous attempts to address the problems of Bridlington have concentrated on improving the existing product. This has not halted the cycle of decline. Hence the divergent trend between the Bridlington position and the national position on unemployment.

6.154 The improvements to the promenades set a quality benchmark for development and urban design which the Council wish to meet again with the marina project. The aim of the project is to enhance Bridlington by helping it to diversify. The construction impact will be minimised by the implementation of an environmental management plan. Construction projects are known to attract visitors. The Council's proposals have the backing of the Bridlington Chamber of Trade and of the Bridlington Hotel and Guest House Association.

6.155 Risk assessment is a process, not a piece of paper. Posford Duvivier have carried out an engineering risk assessment, and the Council have carried out a financial risk assessment.

6.156 There would be no intention to dig out the infill from Clough Hole. In fact, the infilling of that area would assist the proposed development. There would therefore be no risk of the ERDF grant paid towards this scheme (which amounted to £714,000) having to be repaid.

6.157 The joint operation of the marina and harbour would offer economies of scale with an increased income base, no debt to repay, and financial backing from the Council in the early years. Against that, in 2001, the Commissioners operated the harbour (including their landside income) at a loss. Council run facilities like the Spa and Leisure World are provided as part of the resort offer of Bridlington. They earn income, but are not provided primarily to make a profit. They contribute to the attractions and therefore to the economy of the area. The Spa, for example, attracts conference business which benefits the local economy. The sort of all weather attractions which could be developed for Bridlington would almost certainly need to be built outside the town centre, would not employ many people, and would have no substantial impact on the economy of the area.

6.158 The objectors accept that Bridlington is in a dire position, but none of them put forward any other realistic solution. The creation of an improved road link cannot be justified in objective terms, would not accord with Government policy, and would have no proven positive effect on the economy of Bridlington.

6.159 The economic implications of the topside development are capable of being a material consideration in the application for the Works Order. The Works Order would pave the way for this development to take place. It would be unrealistic to ignore the potential benefits. Clearly, the decision maker can take into account the wet side benefits. The weight to be attached to the potential topside benefits is less; but it remains a material consideration.

The proposed development would cause environmental damage

6.160 During the construction of the proposed development, there would be nuisance from noise and dirt. The heavy goods vehicles bringing construction materials to the site would cause increased traffic congestion and a reduction in air quality. Piling associated with the construction would cause not just noise but also potential structural damage to properties. The construction process would also cause the sea water to be muddy and unfit for bathing. It might also cause damage to the sea sewer outfalls. None of those results of the construction process would encourage visitors to come to Bridlington during the extended construction period. Nor would they encourage any people who did come to return while construction proceeded.

6.161 In the longer term, the new marina would affect waves, tidal currents and sediment transport in Bridlington Bay. This could lead to erosion of the beach on one side of the marina and accretion to the beach on the other side. The danger is that it would erode the south beach, reducing its amenity value and the protection which it offers to the Spa Promenade sea wall. The ES (Document ERYC2) acknowledges this possibility at paragraph 4.2.2(i) on page 130, indicating that there is a need for further modelling. It would be unwise to authorise the proposed development before that further work is done in order to assess the extent and intensity of the erosion of the south beach.

6.162 The interruption to the flow of sand around Bridlington Bay caused by the building of the marina could even be sufficient to cause the loss of the Smithic Bank, because there would be no source of replenishment for it once there was no recirculation. This would remove a source of protection for Bridlington's beaches, leading to those beaches being washed away to the south. In their place would be a steep clay slope at the head of the beach, thinly covered in the summer by sand eroded from the cliffs. Such cliffs erode quickly, and comprise the built up frontage of Bridlington itself.

6.163 Looking beyond the immediate area of Bridlington, the coast to the south beyond the Auburn Sands is said to be the fastest eroding coast in Europe. Houses, land and farms suffer badly from coastal erosion, despite the existence of coast protection schemes. There could be additional and unnecessary erosion of the coast well to the south of Bridlington caused by the proposed scheme.

6.164 A wide range of birds - waders, gulls and terns - would be displaced from the beach if the proposed development proceeded. There would also be a danger to fish stocks caused by the possibility of disturbing tributyl tin from the harbour during dredging and construction.

6.165 The proposed development would also cause damage to the visual amenity of people currently resident on South Marine Drive. Instead of a clear view of the sea and a view of the harbour against the background of Flamborough Head, they would have a view of buildings and a marina. It would turn their present sea front location into a view over a back street behind the new sea front development. It would also destroy the view for visitors and people who simply like to walk in this area.

Response of the Council to the allegation that the proposed development would cause environmental damage

6.166 The impact of construction works would be minimised by the mitigation measures identified in the ES, which would be imposed by contractual conditions, and monitored as part of the environmental management plan. A large part of the construction materials would be brought to the site by sea.

6.167 Additional work has been carried out since the ES was prepared on the impact of the proposed works on the sedimentary transport regime and the potential impact on the shoreline and the Smithic Bank. This work has shown that the effect of the marina on flows would be minimal as a result of weak local currents, and that the wave climate would not be significantly affected due to the less reflective nature of the breakwaters. The work has also shown that the net longshore movement of sediment along the coast is south, but that the influence of the scheme on sediment transport will be localised.

6.168 There is no credible evidence that the protection of the Smithic Bank would be lost if the marina were constructed. All the expert evidence is to the contrary. English Nature and their consultant, Professor Pethick, are satisfied on this point.

6.169 Birds displaced from the reclaimed area of beach will have the opportunity to use unaffected areas of beach, the new breakwaters and the harbour walls.

6.170 The use of tributyl tin as an anti fouling treatment on boats has been banned for many years. Historic deposits in the existing harbour are likely to be concentrated on areas adjacent to the harbour walls. Dredging in the harbour would be confined to the area to the landward of the new sheet pile wall. It would be carried out by excavator rather than by dredging plant in order to prevent leakage of contaminants into the harbour.

6.171 Some properties currently overlooking the south beach would have a change of view as a result of the development of the marina. Whether this would be a better or a worse view would be a matter of personal perception. Many would regard a view of the new marina as an attractive one. The requirements of the development framework, avoiding high rise development, would minimise any loss of sea views. During construction, existing views would be adversely affected, but there is no

legal right to a view, and the loss of some views to a limited number of properties has to be balanced against the overwhelming benefits of the project to Bridlington.

The proposed development would adversely affect listed structures

6.172 The listed piers define the present limits of the harbour at Bridlington. The ES was prepared before the piers were listed. It found that the proposed development, because of its scale, would have a major adverse impact on the harbour area and its landscape character. That area provides the setting for what are now the listed buildings.

6.173 The infrastructure works proposed in the Works Order would dominate and substantially obscure the listed buildings from many viewpoints. Parts of the South Pier would be wholly obscured from all viewpoints.

6.174 The Council claim that development to be carried out on the platform created if the Works Order is confirmed is not before the inquiries, and therefore cannot be taken into account in assessing the applications for listed building consent, because its content is not known. This is not accepted; but, in any event, it is hard to see that whatever it might contain would in any way lessen the impact of the proposed infrastructure works on the listed piers. In fact, the Council propose that the topside works should only be determined after an architectural competition. This could change their present thinking substantially, and might result in the need for subsequent changes to the infrastructure works compared with those envisaged by the Works Order. Confidence in the process is not assisted by the fact that, if the Works Order were to be approved and deemed planning permission and listed building consents given, approval of any reserved matters, approval of compliance with conditions, and indeed approval of the topside works would be in the hands of the Council, with no external check on their actions.

6.175 The Council had originally objected to the listing of the piers, and had given only grudging recognition to their status when they were listed. The need for the Council constantly to amend their applications in relation to the piers during the course of the inquiries, the absence of detail regarding the treatment proposed for the piers, and ultimately the offer of a range of options to the decision maker in relation to the listed building applications all underline the lack of importance the Council attach to the listing of the piers.

6.176 The current state of the listed piers does not provide a justification for the Council's applications for listed building consent. The piers are and always have been repaired as necessary. They would continue to be repaired by the Commissioners, in future having regard to their listed status.

6.177 There is no evidence that the Council have looked at the possibility of retaining the South Pier in its current use as a pier.

6.178 No alternative proposal was explored by the Council for the works which impact on the character and setting of the listed piers before the listed building applications were made.

6.179 The benefits for the community which it is claimed would arise from granting listed building consent and allowing the proposed development to proceed are not certain to be achieved for the reasons outlined in paragraphs 6.120 to 6.141 above. If they are achievable, they could be achieved without impact, or without such substantial impact on the listed piers. In any event, it is the topside works, not the Works Order works, which would generate any economic gain. One of the mitigation requirements proposed by the ES was that none of the Works Order works should be started until the topside works had been approved and a contract to carry them out was in place. That is not, however, what the Council now propose to do. If non marina elements of the development proposed were not to be built in a coastal location (as advised by paragraph 3.7 of PPG 20), then there would not be such a great need for works affecting the South Pier. Paragraph C7 of PPG 15 underlines the fact that modern extensions to a listed building should not dominate the existing building in scale, material or situation.

6.180 The applications for listed building consent should therefore be refused, having regard to the guidance contained in paragraphs 3.5 to 3.7 and 3.19 and in paragraph C7 of PPG 15.

6.181 For the reasons outlined in paragraphs 6.80 and 6.90 to 6.94 above, criticising the engineering design of the proposed works, those works would also put at risk the structural integrity of the South Pier.

6.182 The Council do not have a particularly good record for looking after listed buildings which they own. Dane's Dyke Farm and Bridlington Town Hall are both Grade II listed buildings owned by the Council. The photographs contained in Document OBJ/186 show that Dane's Dyke Farm has not been maintained at all, while Bridlington Town Hall has not been maintained with any sensitivity to its listed status.

Response of the Council to the alleged adverse impact on listed structures

6.183 The Council's proposals would bring changes to the listed piers and to their setting. But change is not, of itself, negative. It is no part of the legal framework or the policy guidance that either listed buildings or their setting should be fossilised.

6.184 EH are of the view that the Council's proposals for the piers, both originally and as amended, can be accommodated by the listed piers without detriment to their special character.

6.185 The direct visual effect of the topside development cannot be taken into account, because there is no application for that development before the inquiries as part of the applications for listed building consent.

6.186 There is nothing unusual about changes being made to the detailed proposals for listed buildings during the course of long running inquiries to take into account representations which have been made. Criticism of that process is misconceived.

6.187 Both EH and Dr Wools, an independent historic buildings consultant, support the view of the Council that the listed building applications contain sufficient detail to allow the decision maker to reach a decision on them. The co-existence of the two statutory regimes and the requirement for concurrent inquiries as part of the decision making process means that Parliament has seen no inherent incompatibility between an application for planning permission in outline and a detailed application for listed building consent submitted with an application for confirmation of an Order under the Transport and Works Act. It may mean that greater weight needs to be placed on conditions and undertakings. It may also mean that the fact that the listed building consent application is being considered contemporaneously with the Transport and Works Act application is a factor to be taken into account in determining the degree of detail required at this stage. In any event, the requirement is for adequate detail, not full detail.

6.188 The piers would need repair if the Council's proposals did not proceed. The extent of the repairs needed and the time within which those repairs are required are matters which are very substantially agreed between the Council and the Commissioners. (The extent of the agreement and disagreement is set out in Document OBJ/214). The estimated cost of the required repairs is £300,000. Further enhancement agreed between the Council and English Heritage would cost around £320,000. The Council's proposals would have the benefit of ensuring that all the necessary repairs to the piers would be carried out at an early date. It is unlikely that the Commissioners would be able to carry out all the necessary repairs within anything like the same timescale, because they would not be able to afford to do so. No grants would be available to them to carry out the necessary repair work.

6.189 The South Pier would be retained as part of the enlarged fishing harbour and marina area with its distinctive history and character recognised within the scheme.

6.190 Alternative locations for the marina have been considered and rejected for good reason. Following the listing of the piers, the scheme was reviewed before the applications for listed building consent were made. There are no alternative sites for the landside elements which are currently

available to the Council. Alternative treatments for the piers have been considered during the inquiries and are before the inquiries for approval.

6.191 The ES accepts that the works which would be authorised if the Works Order were to be confirmed would have an impact on the piers before the topside works were constructed. If potential harm is identified from the Works Order works, the exercise of balancing the benefits to Bridlington against that harm must be undertaken. Whilst the precise effect of specific topside works clearly cannot be taken into account, weight can be given to the potential which the creation of the development platform would represent. In addition, Work No 2 would bring the fishing industry elements of the harbour together in a way which would deliver economic advantage to the fishermen. The Council have taken the best available advice, and are satisfied that the scheme will deliver the benefits it sets out to achieve. Any harm to the listed piers would be outweighed by those benefits.

6.192 For the reasons outlined in paragraph 6.111 above, the Council do not accept that the works proposed would put at risk the structural integrity of the South Pier.

6.193 The Council have a good record generally as custodians of listed buildings. A scheme has been agreed for the restoration of Dane's Dyke, and the Council are part of the way through a programme of refurbishment at the Bridlington Town Hall.

There is real doubt whether the development would be achieved, even if authorised

6.194 The carrying out of the development which would be authorised by the Works Order depends to a very substantial extent on grant aid. There is no firm commitment to provide this assistance, but merely vague promises from the funding agencies involved.

6.195 If those promises are not fulfilled, the Council would have no effective come back on the organisations concerned. Nor does it have any contingency plan to replace any grant which does not become available.

6.196 Grants already received from the EU for the Clough Hole infill might have to be repaid if the work there, carried out as recently as 1998/9, were to be undone or put to a different purpose in the proposed development.

6.197 Assuming the marina and the development platform were to be built, however, complex major building projects have a habit of costing considerably more than estimated. There is a real danger that, once the infrastructure has been built, no developer would be able to afford to build on it. Bridlington would then be left with a permanent eyesore (in the shape of the development platform), for which no sensible use could be envisaged. The failure to attract a developer for the topside in advance of the inquiries shows that this is a real possibility. The landside development would not provide a sufficient return on capital invested to be attractive to a developer. Even the Council accept that, in order to attract the hotel which they consider to be so important to the scheme, they will have to provide grant aid amounting to around 50% of the capital building cost. This does not suggest the likelihood of keen developer interest in the proposals.

6.198 Potential developers would also be reluctant to build in such an unusual location on a development platform which the developer had had no involvement in preparing.

6.199 The Council state that they have accepted all the mitigation measures put forward in the Environmental Statement, but one of the recommended mitigation measures, intended to minimise the effects on landscape and views after construction, is

"Construction of the marina should not commence until an approved scheme has been agreed for the topside development of the reclaimed area and a construction programme has been confirmed which ensures that work starts on the topside development within one year from completion of the works authorised by the Order. This is to ensure that the reclaimed land does not become a 'brownfield' site and incur the problems that are often associated with sites of that nature (e.g. fly tipping)."

(Document ERYC 2, paragraph 4.6.1 (iii) at page 181)

It appears that the Council do not now intend to pursue that recommended course, because they have put forward a list of possible interim uses for the land which they wish to reclaim (see paragraph 4.108 above).

Response of the Council on the question of achievability of the proposed development

6.200 The problem with all the previous schemes has been the shortfall of funding. That does not apply this time. It is accepted that there is no binding contract to provide the various elements of grant aid, but indications of availability of possible grant are all that can be expected at this stage.

6.201 As indicated in paragraph 6.156 above, there is no intention to dig out the infill from Clough Hole, and no prospect of the ERDF grant received having to be repaid. No reasoned challenge has been made to the cost estimates provided by the Council for the works covered by the Works Order.

6.202 The idea of promoting the whole scheme, including the topside development, was considered and was taken through the procurement process to see whether a developer could be attracted. This proved not to be possible. The Council would therefore intend to commence construction of the new marina as soon as possible if the Orders are confirmed. A start would be dependent on securing sufficient external funding by confirmation of grant availability, but not on attracting a developer for the topside. At this stage, the topside details are unknown, and that development can only be dealt with by the provisions of a development framework, which will set a pattern for future development when it occurs, if the Orders are confirmed. That development framework has been tested at these inquiries. There would be no difficulty in incorporating within the design framework any specific requirement which the Secretary of State considered to be required.

6.203 Discussions with developers following the earlier aborted procurement process provide confidence that there will be considerable interest in the development, provided the uncertainties of legal powers and land assembly can be removed. The detailed development proposals for the topside would be subject to full public consultation through the planning process at that time.

Other grounds of objection

6.204 The majority of people in Bridlington is opposed to the form of development proposed by the Council. The various purported samples of public opinion taken by the Council have all invited people simply to support the development, rather than asking for their opinion. The Council survey taken between July and September 2000 at various public events asked as its first question "Do you support, in principle, the development of a marina in Bridlington's South Bay". The result of this survey has never been published. A telephone survey of 500 Bridlington subscribers, undertaken in October 2000, again asked, "Do you support, in principle, the development of a marina in Bridlington". The public meetings held at the Spa in September 1999 and May 2000 did not offer an opportunity to register opposition to the development proposals, and a two day public exhibition at the Spa in October 2000 gave people a chance to sign a pre prepared letter of support for the development, but made no provision for people who wished to record an objection. In just the same way, a petition, apparently organised by the Bridlington Hotel and Guest House Association and Mr David Dowson (the Chairman of the BRP) simply invited people to sign a statement "in favour of the Yorkshire Marina at Bridlington".

6.205 Many people are in favour of a marina in general terms (including many of the objectors to the Council's scheme), but they do not wish to support the idea of a marina which destroys a large part of the most popular beach at Bridlington or which adversely affects the listed piers.

6.206 The Bridlington Protection Group have carried out two surveys of public opinion. The first was undertaken between August and November 2000. It gave people the choice of stating a view for no marina and no development; a marina, but with no development on the beach; or the marina planned by the Council. Of 1,128 respondents, 706 (62.6%) wanted no marina; 373 (33.1%) wanted no development on the beach; and 49 (4.3%) supported the marina planned by the Council.

6.207 The second survey carried out by the Bridlington Protection Group between May and July 2002 offered people the opportunity to express their opposition to a development proposal which would take any part of the South Beach for building or development. A total of 1,107 people from Bridlington and beyond signed this petition. It comprises Document OBJ/225.

6.208 The Council have repeatedly been requested to carry out a proper referendum on the proposed development, but they have refused to do so, despite the scale and importance of the scheme to the future of Bridlington.

6.209 The Council's proposals in this case are not in fact marina led, but development led. The marina has only been proposed to justify an application for planning permission to build on the beach. It would provide an unfortunate precedent for use elsewhere.

6.210 The Council's description of the beach as "a brownfield site" is ludicrous. It is just as undeveloped as an undeveloped field. In reality, the beach is the precise equivalent of a greenfield site.

6.211 In order to secure the removal of Yorkshire Water's objection to the scheme, the Council have entered into an uninsured contingent financial liability to Yorkshire Water. With the possibility of claims for consequential losses from third parties if any contingency covered arises, the possible costs to the Council could run into many millions of pounds.

Response of the Council to other grounds of objection

6.212 Public consultation has been carried out in relation to the SPG, the appropriation of land in front of the Spa, the proposed park and ride facility at Carnaby and on the Orders themselves. In addition, public meetings, an open exhibition and newsletters delivered to every household have advised local people of the proposals. The inquiries have provided a forum at which people have had the opportunity to make their views known, precisely and in detail.

6.213 The project is not simply about creating a marina. Its main objective is to create the conditions to secure the regeneration of Bridlington. A small marina would not achieve that aim.

6.214 A referendum would have been costly, and could have been inconclusive.

6.215 The Council's proposals are not developer led. They are aimed at addressing socio-economic need in Bridlington, and bringing about regeneration of the town.

6.216 The beach is akin to a brownfield site in the sense that it avoids the loss of any greenfield agricultural land.

6.217 Although legally the Council's agreement with Yorkshire Water imposes a contingent financial liability on the Council which cannot be covered by insurance, this is not the dire prospect it might seem. The provision for monitoring before, during and after construction of the marina means that the possibility of anything other than minor works being required at the expense of the Council is virtually nil. The possible maximum liability can be estimated, and it is small. It is also limited in time. Any additional costs which might arise could almost certainly be covered within the scheme contingency.

The objection to the Rule 9(8) notices regarding beach accesses

6.218 The Council responded to claims that certain accesses to the beach were public rights of way by purporting to give notice on a without prejudice basis under Rule 9 (8) of the Applications Rules that four of them - the Old Lifeboat Slip, the slipway from the Spa Promenade to the beach, and two sets of steps from the promenade to the beach - would be affected by the Works Order. The notices in relation to the Old Lifeboat Slip were not properly posted. No notice was posted at the head of the Slip. Two notices were posted around 90 metres away, one at the top of the slipway to the South Pier, the other at the top of the slipway referred to as the Spa Promenade Pedestrian Slip.

6.219 Stopping up these beach accesses under the Transport and Works Act would be inappropriate, since they have no connection with nautical or coast protection matters. The proposed marina would be at some distance from these accesses.

6.220 The notices, in any event, do not deal with all the rights of way which it would be necessary to stop up in order to carry out the Council's proposed works. The part of the present Lifeboat Slip which runs from South Marine Drive to the beach has not been covered in the notices.

6.221 The notices which were published were misleading because they do not give any indication of the substantial difference in levels between the promenades and the beach.

6.222 The issue of the effect of the Works Order on these accesses should have been resolved at the outset. It is inappropriate for the Council to attempt to deal with this issue a substantial part of the way through the inquiries. Indeed, the fact that they have attempted to do so suggests that they are assuming that the inquiries will be determined in their favour.

6.223 The accesses concerned have been used regularly for many years. They are required by the public, and should be retained. They provide the only means of accessing the section of the beach which they serve. Without them, people wishing to gain access to the beach will need to make a substantial detour, which will be difficult for parents with young children and for people with access related disabilities.

6.224 Traders along the promenades will also lose trade, because people on the beach will not be able to reach them easily from the beach. The stopping up of the closest points of beach access to Windsor Crescent, West Street, Pembroke Terrace and Horsforth Avenue would also damage the trade of the many properties providing holiday accommodation in those roads.

6.225 The denial of beach access along this substantial stretch could also impede access to the sea, with an adverse impact on the efficiency of sea rescue operations.

6.226 Closure of the Old Lifeboat Slip should not be allowed because it forms part of the South Pier, which is a listed structure.

6.227 Giving notice under Rule 9 (8) of the Applications Rules does not fulfil the Council's requirement to deposit copies of relevant documents concerning their Works Order with the organisations prescribed in paragraph 10 (a) of Schedule 5 to the Applications Rules. Without compliance by the Council with paragraph 10 (a), it would be beyond the powers of the Secretary of State to extinguish any rights of way under the Works Order.

6.228 Whilst the Council eventually deposited documents with the prescribed organisations, on a without prejudice basis, and the representative of the Byways and Bridleways Trust (which was the only prescribed organisation to submit an objection) accepted that the organisations had not been prejudiced by lack of knowledge of the application (see paragraph 2.70 above), it remains the case that the Application Rules should have been, but have not been, properly followed.

The response of the Council to the objections to the Rule 9(8) notices regarding beach accesses

6.229 The site notices in connection with beach accesses were placed at either end of the ways referred to, or as near as practicable to those points with owners' consent. The Commissioners did not respond to a written request for permission to place a notice at the head of the Old Lifeboat Slip, so the notice was posted as close to that position as reasonably possible. The locations used for each of the site notices are shown on the map following page 41 of Document APP/254. These were correct and appropriate locations under the Applications Rules. One notice was removed over the weekend of 26/27 January 2002, but it was replaced on 28 January.

6.230 The routes which the Council wish to eliminate would be affected by the works shown in the Works Order. The Transport and Works Act includes provisions to deal with routes to be stopped up or diverted to enable development to proceed.

6.231 The Council are not seeking to stop up the present Lifeboat Slip, which runs from South Marine Drive to the beach.

6.232 The difference in level between the promenades and the beach is obvious on the ground. The difference in height is the reason the slipways and the steps exist. Nothing is hidden from the public on this point.

6.233 While the Council do not accept that the routes concerned are public rights of way, they considered it important (in view of the suggestion that public rights exist) for an opportunity to be given for objections to be made at the inquiries. If the Council had considered at the Order making stage that these routes carried public rights, they would have posted notices at that time. Posting notices during the inquiries does not mean that the outcome of the inquiries is being anticipated; it was done to ensure that the inquiries had the issue and the objections before them.

6.234 The land has been enjoyed by the public as part of a public open space, not as a public right of way. The Council's procedure for appropriating the public open space for development was dealt with before the opening of the inquiries.

6.235 If the Works Order is confirmed, the issue of access between the promenades and the beach would no longer arise in the area affected by the Works Order. The existing beach in that area would become part of the development area. It would cease to be a beach. Walkers and wheelchair users would be able to move through various parts of the development, and to access the beach further south. The potential loss of trade to specific retail outlets and holiday accommodation and the alternative possibility of increased trade and additional holiday visits arising from the Council's proposed development, are issues being considered at the inquiries. They do not arise directly from the Rule 9 (8) notices.

6.236 If the Works Order is not confirmed, and the marina proposal does not proceed, the stopping up of the beach accesses would not take place.

6.237 Arrangements would be made for the rescue services to be in a position to access the beach and the sea throughout both the construction and the operation of the marina development. The rescue services do not launch from any of the accesses affected by the Rule 9 (8) notices at present.

6.238 Bodies prescribed in paragraph 10 (a) of Schedule 5 to the Application Rules were notified of the Council's Works Order on a without prejudice basis on 17 April 2002. All such bodies thus had an opportunity to make representations concerning the Council's proposals to the inquiries.

Alternative proposals

6.239 During the course of the inquiries the possibility of building a marina at Wilsthorpe instead of adjacent to the harbour at Bridlington was raised by objectors (paragraph 6.66 above). There are approximately 80 hectares of land available for development in that location. The land is undeveloped and in the ownership of the Council. It is the subject of a specific policy in the Local Plan, BRID 17, which accepts the principle of comprehensive development of the site for major leisure and tourism uses, including a marina.

6.240 Objectors also raised the possibility of building a smaller marina within the existing harbour by the creation of a half tide sill (paragraph 6.63 above) and of building a marina to the north of the existing harbour (paragraphs 6.64-65).

6.241 Two variations were also put forward by objectors to the Council's scheme for a marina to the south of the existing harbour.

6.242 Mr Cyril Oliver put forward a scheme to create a smaller marina to the south of the existing harbour, but leaving a canal between the southern face of the South Pier, opening into a sea water lake with fountains at the landward end. This proposal would leave the South Pier unaffected by the development, other than providing for its extension by a revised Work No 2 to create a northern boundary for the lock entrance to the marina. It would also retain in place the Old Lifeboat Slip,

involve a much smaller eastern breakwater, take much less beach, and avoid any infill in the existing harbour. A new hotel would be created on a site assembled to the rear of the Spa at the junction of Horsforth Avenue and South Marine Drive. Mr Oliver's proposal is shown on Document OBJ/198. The proposed hotel site is shown in more detail on Document OBJ/104.

6.243 Mr Gordon Vincent also put forward a smaller marina, extending for about 200 metres to the south of the South Pier. Accommodation for around 280 boats would be provided in a lock accessed marina. There would also be a half tide sill in the existing harbour. The breakwaters would be built in stone rather than rock armour. A small amount of housing (around 44 units) would be provided at the landward end of the marina. Combined premises for the RYYC and a Harbour Master's office would be built in stone adjacent to the lock entrance to the marina. The proposal is shown on a plan annexed to Document OBJ/P46. A smaller marina could be completed more quickly than the Council's proposals, with less disruption to tourism. It would also have less impact on existing views. Any additional topside facilities required (including car parking) should be provided on land by the acquisition of property and redevelopment.

6.244 Finally, Mr Terence Morrell put forward a completely different alternative proposal designed to secure economic improvement in Bridlington. He proposes a major indoor leisure and retail complex, of metal frame and glass construction for speed of erection. This would provide, under cover, retail units, an exhibition hall, an arena, casino, fitness centre, cafes and bars, together with an outdoor market and garden centre. Entitled Bridlington Expo, and providing ample free parking, the development could take place just to the south of Bridlington on land currently used by the Bridlington Golf Club, which could be relocated.

Response of the Council to the alternative proposals

6.245 Development of a marina at Wilsthorpe would not deliver the economic benefits the Council seek for the town of Bridlington. It would create a competitor for the town centre, and would not represent an environmentally sustainable location for a marina.

6.246 A half tide sill within the existing harbour would provide berths for only 120 to 160 boats; would offer limited access; would provide no landside facilities; and would exacerbate wave conditions within the harbour.

6.247 A marina to the north of the harbour would be closer to the Flamborough Head cSAC, and would have an adverse impact on the stability of the south beach and the water quality along the south beach.

6.248 Mr Oliver's alternative scheme would not be commercially viable. It would not provide sufficient landside development to justify the expenditure on the breakwaters. The canal and the seawater lake would involve a great deal more sheet piling than the Council's scheme. The proposal makes no provision for a marina facilities building, and makes no provision for car parking. The proposed hotel site would need to be assembled from a multiplicity of existing owners, almost certainly involving compulsory acquisition.

6.249 The scale of Mr Vincent's marina proposal and the limited redevelopment associated with it would not achieve the step change required to regenerate Bridlington. There would be significant delays in achieving his landside redevelopment because of the need for land acquisition, almost certainly involving compulsory purchase.

6.250 The Bridlington Golf Club knew nothing of Mr Morrell's proposals for their land until they read of them in the press. They have 600 members, and the course is also used by many visitors. They have been at their present site since 1905, and wish to stay there. The land identified for Mr Morrell's proposal is therefore not available.

Written objections

Most of the points raised in the written objections to the Works Order were covered by objectors who appeared at the inquiries, but the following additional points are included in the written objections. They include (at paragraphs 6.255 and 256 below) an objection from W Eves & Co (ME) Ltd, who have an interest in relation to access in reference 10 in the Book of Reference to the Works Order (Document ERYC4), and an interest as lessees and occupiers of part of reference 13.

6.251 The scheme would have an impact on the Gypsy Race, which flows from the Yorkshire Wolds into Bridlington Harbour. Many houses in Bridlington are built on flood plains, and any back up preventing the flow of the Gypsy Race into the sea could cause flooding.

6.252 The Government now seeks to avoid residential building on flood plains. Building at sea level over the sea should therefore equally be avoided.

6.253 The development proposed would have an adverse effect on the stability of the coast to the south of Bridlington, increasing the cost of sea defence works.

6.254 The Council are unable to carry out their existing statutory functions satisfactorily. They are unsuited to running commercial activities. The funds earmarked for the marina scheme should be used for other, more pressing purposes.

6.255 W Eves & Co (ME) Ltd provide a self service fuel tank in the harbour, which is available at all hours. The plant includes an oil/water separator to protect the environment. Access to fuel at all hours is necessary for the fishermen. The arrangements between the Company and the Commissioners ensure such access. The proposals do not indicate that these arrangements would be continued. The lack of equivalent arrangements would endanger the livelihoods of the fishermen.

6.256 Individual delivery of fuel by road tanker for each fishing vessel would be uneconomic, and would generate many more traffic movements than the current one delivery to the tank each week. Alternatively, the delivery of marine diesel oil in drums would increase the potential pollution problems arising from spillage.

The response of the Council to the written objections

6.257 The Council have employed world renowned engineers, Posford Duvivier, who have carried out an environmental impact assessment. They have extensive experience of working along the east coast of Britain. Their conclusions, having carried out coastal modelling work, are that the impacts on the coast would be localised. The proposed location of the development would have a minimal effect on coastal processes and on the environment.

6.258 The Environment Agency are satisfied with the Council's development proposals to the extent that they were able to withdraw their objections to the Council's Orders before the start of the inquiries.

6.259 A peer review of the Council carried out by the independent IDeA in March 2000 found the Council to be "*a very good organisation, with the capacity for future excellence*". The harbour and marina would, under the Council's proposals, be run not by the Council but by the new Harbour and Marina Authority. This would include board members with commercial experience.

6.260 The Council has set aside funds for the marina development because it is its highest priority capital project. The grant support which has been offered by other organisations, such as the EU and Yorkshire Forward, is specific to the marina scheme. It cannot be regarded as available for other projects.

6.261 The proposed development seeks to improve facilities for fishermen. There is no proposal to reduce facilities.

The objectors' position regarding conditions on any deemed planning permission

6.262 Without prejudice to their opposition to the proposed development, some objectors were prepared to suggest conditions which might be imposed on any deemed planning permission which might be granted by the Secretary of State. They included:

- (a) relating the approval of all reserved matters to their impact on the listed piers;
- (b) requiring public access throughout the marina to be available within two years of the start of work on the southern breakwater;
- (c) providing for no noise to be detectable during construction 25 metres from the boundary of the works;
- (d) prohibiting use of the Spa Promenade for site facilities, access or parking during construction;
- (e) prohibiting use of the North or South Piers by vehicles in connection with construction or development;
- (f) requiring that a facility be available at all times for any breach of condition to be reported;
- (g) requiring all conditions to be repeated in full in all planning and other approvals and in all contracts connected with the development;
- (h) rendering null and void any contract concerning the development which might have been entered into by the Council ahead of approval of the development;
- (i) prohibiting the letting of any contract in connection with the development until after the local elections in 2003;
- (j) restricting the breakwaters to the east of a line drawn in a direction 210 degrees from the south east corner of the North Pier in order to parallel the existing foreshore contours;
- (k) requiring the marina to be constructed and in operation before any land reclamation takes place;
- (l) limiting total land reclamation to 147,100 square metres, including the breakwaters;
- (m) restricting the height of any building erected as part of the development to two storeys plus a pitched roof;
- (n) limiting the use of any retail outlet built as part of the development or in the existing harbour to the marine needs of vessels; and
- (o) requiring public access free of charge to all parts of the marina apart from those giving immediate access to vessels using the marina.

The response of the Council to suggestions regarding the conditions to be imposed on any deemed planning permission

6.263 The Council would resist all of these suggested conditions, on the following bases:

- (a) is unnecessary, and outside the requirements of Section 92 of the Town and Country Planning Act 1990;
- (b) is unnecessary and also impractical;
- (c) is dealt with in the mitigation strategy, and is therefore contained in the Unilateral Undertaking (Document APP/262);

- (d) is also dealt with in the mitigation strategy, and is therefore contained in the Unilateral Undertaking (Document APP/262);
- (e) is excessive; the Council is not proposing that either pier would normally be used as a vehicular access route for construction, but a blanket ban would be unreasonable;
- (f) is again dealt with in the mitigation strategy, and is therefore contained in the Unilateral Undertaking (Document APP/262);
- (g) is unnecessary, in that compliance with relevant conditions will be dealt with through the contractual arrangements to which they apply;
- (h) is not relevant to planning;
- (i) is also not relevant to planning;
- (j) is unnecessary, because the works permitted would be defined in the works plans;
- (k) is unreasonable, in that it would be of great importance to make early progress with the proposed topside works; in deferring that progress, this condition would be too onerous;
- (l) is unnecessary, because the works permitted would be defined in the works plans;
- (m) is unnecessary, and also not relevant to the development for which permission is sought; it is, however, dealt with in the development framework;
- (n) is unreasonable, since it is too restrictive, as well as not being related to the development for which permission is sought; and
- (o) is not relevant to planning, though it is dealt with in the Unilateral Undertaking.

The objectors' position regarding conditions on any listed building consent

6.264 Without prejudice to their opposition to the Council's applications for listed building consent, some objectors were prepared to suggest conditions which might be imposed on any listed building consents which might be granted by the Secretary of State. Some of the suggestions were accepted by the Council and incorporated in their revised listed buildings conditions document APP/248. Those suggestions which were not accepted by the Council comprised:

- (a) the inclusion of a requirement to record, as well as to monitor, stresses on movements of the structure of the South Pier, both during and after construction work;
- (b) a prohibition on the placing of fill by hydraulic means within 50 metres of the south face of the South Pier;
- (c) a requirement for prior approval of the overtopping and permeability criteria of the proposed southern breakwater in order to prevent inundation of the fill behind the South Pier;
- (d) a restriction on the depth of fill south of the South Pier to avoid settlement arising from compaction of the adjoining beach; and
- (e) a prohibition on dredging within 10 metres of the listed piers, and on any dredging which would produce a slope steeper than 1 in 50.

The response of the Council to suggestions regarding the conditions to be imposed on any listed building consents

6.265 The Council would resist the suggested conditions listed at (a) to (e) in paragraph 6.264 above on the following bases:

- (a) recording is not necessary;

(b) a distance of 50 metres goes beyond what is necessary, and is not supported by any evidence; a prohibition on the placing of fill hydraulically within 15 metres of the south face of the South Pier would be acceptable;

(c) prior approval of permeability and overtopping criteria is unnecessary

(d) the restriction would be unnecessary and unreasonable; there has been no evidence provided to justify the danger at which it is aimed; and

(e) the prohibition on dredging outside the area of the work for which listed building consents are sought would not be relevant to those consents. In addition, the wider limitation on the finished slope of dredging would be unenforceable.

Enforcement of conditions and undertakings

6.266 Notwithstanding his opposition to the Council's applications, one objector makes the point that, if the Council's Orders are confirmed, and deemed planning permission and listed building consents are granted, compliance with any conditions imposed or any undertakings accepted would need to be ensured. Unless such requirements and promises are enforced, they are meaningless. A Liaison Committee should be set up to carry out that role if the Orders are confirmed. The existing Commissioners could serve as that Committee.

Modifications to the Works Order sought by the Commissioners

6.267 The Commissioners, without prejudice to their opposition to the Works Order, seek modifications to it if it is confirmed

- to prevent the appointed day for operation of the Order being earlier than the day after the Council have received detailed planning permission for the topside works, and
- to provide an indemnity to the Commissioners from all claims, demands, injuries and consequential rental and income loss and costs arising from the works which would be approved by the Works Order.

The detailed modifications sought by the Commissioners are set out in Document OBJ/221.

Response of the Council to the modifications to the Works Order sought by the Commissioners

6.268 It is perfectly normal, in a project of this size, and in a location such as Bridlington, which is not at the forefront of developers' minds as an investment opportunity, for the public sector to need to make their investment before the private sector has the confidence to make a commitment. This was accepted by the Commissioners' planning witness. Delaying the time at which work authorised by the Works Order could commence until a scheme for the topside had detailed planning permission could put at risk the continued availability of substantial grant aid.

The Revision Order

Objection to the removal of the Commissioners

6.269 For more than three centuries, the Commissioners have managed the harbour at Bridlington, coping with the varying demands of different types of harbour users. They have managed the harbour as a trust port, for the benefit of the harbour users and also for the benefit of the town itself. They have relevant expertise and have built up specialist knowledge. They have prudently generated land based income to support the cost of running the harbour. Warehouses for the fishermen are conveniently located, and available at reasonable rent. The facilities of the harbour are available for 24 hours each day.

6.270 The financial prudence of the Commissioners has allowed the harbour to be improved over the years. Vessels now come from other ports to use the hoist at Bridlington. The Commissioners do not represent a call on the revenues of the Council tax payers of East Riding of Yorkshire Council.

6.271 The Revision Order is only being promoted because the Council failed to persuade the Commissioners to support the Works Order.

Response of the Council regarding the removal of the Commissioners

6.272 The Trust Port Review and the need to comply with it means that the Commissioners cannot remain in their present form. There is therefore a choice between reforming the Commissioners and replacing them. The facilities of the harbour need substantial improvement. The Council's Orders would deliver the best chance of achieving that improvement. It is clear that the Commissioners and the Council could not now work together for the creation and management of the marina.

Objection to the replacement of the Commissioners by the Council

6.273 The Council have no track record of managing a harbour. Facilities which the Council run in Bridlington lose money. The Spa operates at a deficit, as does Sewerby Hall and Leisure World. The Council even manages to lose money on its management of off street car parking.

Response of the Council regarding their replacement of the Commissioners

6.274 The Council would not be managing the harbour. If the related Empowerment Order were approved, the harbour (together with the marina) would be managed by the new Harbour and Marina Authority.

Objection to the removal of the Commissioners with no guarantee that the marina would be built

6.275 The Revision Order provides for the Commissioners to be dissolved immediately the Order comes into force, and for the transfer of their powers to the Council. Thus the Council could take over the harbour from the Commissioners, even if the marina were never constructed. This should not be possible.

6.276 Moreover, if the Works Order is rejected (so that it will not be possible for the Council to create the marina), then the Revision Order should also be rejected.

Response of the Council regarding the removal of the Commissioners with no guarantee that the marina would be built

6.277 Both the Commissioners and the Council agree that there is no prospect of the Commissioners and the new Authority working together. One body is needed to manage the harbour and, ultimately, the marina, so that the marina development can proceed smoothly, without interference or opposition. That change needs to happen at the earliest possible time to allow progress to be made with the works if the Works Order is confirmed. If the Commissioners were to remain in control of the existing harbour, they would have the opportunity to frustrate and obstruct the speedy achievement of the works.

Written objections concerning the Revision Order

6.278 The written objections to the Revision Order contain no additional grounds of objection to those dealt with above. The petition opposing the Revision Order (Document OBJ/129) simply states that the signatories wish the Commissioners to continue running the harbour as a trust port.

Modifications to the Revision Order sought by the Commissioners

6.279 The Commissioners, without prejudice to their opposition to the Revision Order, seek a modification to it, if it is confirmed, to prevent the appointed day to bring the Order into operation being a day sooner than that on which the marina has been constructed and is open for use. This would prevent the transfer of the harbour undertaking to the Council until the marina had been constructed. The detailed modification sought by the Commissioners is set out in Document OBJ/221.

6.280 The Council's response to this requested modification is the same as that to the related point of objection to the Revision Order. It is set out at paragraph 6.277 above.

The Empowerment Order

Objection to the extent of control over the new Authority by the Council

6.281 Under Article 7 of the Empowerment Order, all the nine initial appointments to the new Harbour and Marina Authority would be made by the Council. Thereafter, the Council would continue to appoint four of the members of the Authority. Whilst the remaining five would be made by the Authority, they would for some time be made by people who owed their initial appointment to the Council. It is therefore reasonable to suppose that the people appointed would, in acting as members of the Authority, give priority to the interests of the Council. There is a history of Council Members who have in the past been appointed to the Commissioners putting the interests of the Council first.

6.282 Certainly in its early years, the financial pressures on the new Authority alone would prevent its members acting independently of the Council.

Response of the Council regarding the extent of control over the new Authority

6.283 Article 8 of the Empowerment Order would require that each member was independent, and not appointed to be representative of any particular interest. The Trust Port Review envisages local authorities having continuing nomination rights as representatives of the local community. If any member did not abide by the principles of independence, Article 12(i) would provide for his or her disqualification.

6.284 The funding relationship between the Council and the new Authority would be at arm's length, and the Council's support for the Authority would be limited in time and in total cost.

Objection regarding the make up of the new Authority

6.285 The members of the new Authority would be untried and untested, and would not have the experience of the existing body of Commissioners. Originally, no specific qualifications for membership of the new Authority were identified. The qualifications subsequently introduced by the Council in Document APP/132 are so extensive that anybody capable of drawing breath would have sufficient qualification for membership.

Response of the Council regarding the make up of the new Authority

6.286 Members who are candidates for appointment would be required to demonstrate one or more of a range of relevant skills needed to manage the new Authority effectively. Those skills would be specified in the Order if it were to be confirmed in the form now requested by the Council. Existing Commissioners would be able to make their skills available by applying for membership of the new Authority, provided they were qualified for appointment.

The financial viability of the new Authority and the potential impact on Council tax payers

6.287 The Commissioners currently give their services on a voluntary basis, and the harbour is self supporting. It achieves this by deriving around half its income from land based sources. Trust port status means that any profit must be used to improve the fabric of the harbour and generally for the benefit of all harbour users.

6.288 The Empowerment Order would permit the payment of allowances to members of the new Authority. The income stream derived by the Commissioners from land based sources, which would be transferred under the Revision Order to the Council, would not be passed on by the Council to the new Authority. Thus the new Authority would lose half of its harbour income, and be called upon to run, in addition, a loss making marina. A self financing harbour would be turned into one dependent on public subsidy.

6.289 Conversely, whilst the Council may offer financial support to the new Authority, there is no requirement for it to do so. The Council have made it clear at the inquiries that their financial assistance to the new Authority is intended to be limited both in scale and in time.

Response of the Council regarding the financial viability of the new Authority and the potential impact on Council tax payers

6.290 The new Authority would be expected to operate on a commercial basis. The Council would set it up with no debt as a project designed to secure the economic regeneration of Bridlington. The Council would assist the Authority financially in the early years of its operation. A figure roughly equivalent to the land based rents presently received by the Commissioners would be available from the Council to the new Authority to assist the new Authority until it became self financing.

6.291 It is true that there is no legal obligation for the Council to offer financial support to the new Authority, but the Council has not gone to the trouble of promoting these Orders only to let the new Authority fail for lack of cash flow in its early years.

Written objections concerning the Empowerment Order

6.292 In the main, the points raised in the written objections to the Empowerment Order coincide with those put forward by objectors who appeared at the inquiries. The one additional point made is that the Empowerment Order is not really promoted in connection with the harbour. It is promoted to facilitate a large commercial development.

Response of the Council to the written objections concerning the Empowerment Order

6.293 The Empowerment Order is promoted as part of a package of proposals designed to achieve the regeneration of Bridlington. The management of the harbour has an important role to play in the achievement of that aim.

Modifications to the Empowerment Order sought by the Commissioners

6.294 The Commissioners, without prejudice to their opposition to the Empowerment Order, seek a modification to it, if it is confirmed, to prevent the appointed day to bring the Order into operation being a day earlier than the day on which the Works Order comes into operation. Given the modification which the Commissioners seek to the Works Order (dealt with in paragraph 6.267 above) that would mean that, if the Works Order were modified as the Commissioners request, the Empowerment Order could not come into operation until detailed planning permission for the topside works had been granted. The detailed modification sought by the Commissioners is set out in Document OBJ/221.

Response of the Council to the modification to the Empowerment Order sought by the Commissioners

6.295 The new Harbour Authority needs to come into operation quickly to work with the Council while the marina is being built. If the modification sought by the Commissioners to the Works Order were approved, the modification they seek to the Empowerment Order, taken alongside it, would prevent that happening. The Council therefore oppose both requested modifications.

7. The cases of the interested parties

The material points are:

The statutory agencies

English Nature

7.1 English Nature ("EN") provided a written statement for the inquiries (Document REP/2). At my invitation, they also appeared at the inquiries to answer a series of pre set questions, prepared in consultation with Professor Pritchard, the Environmental Assessor. All parties to the inquiries were given the opportunity to contribute to these questions, but the questions eventually put to the representative of EN were settled by me. They are contained in Document X/14, and the responses of EN are set out in Document REP/4.

7.2 The detailed evidence given by EN is incorporated appropriately in Professor Pritchard's report. I summarise it very briefly here, in order to provide an overall picture.

7.3 EN's opinion is that the adequacy, accuracy and relevance of the environmental information provided in support of the Council's Orders meets the requirements of the Conservation (Natural Habitats etc) Regulations 1994.

7.4 EN consider that the conservation objectives for the European marine site and adjacent international interest features would not be adversely affected by the Council's proposals. So long as it can be demonstrated that there would be no adverse effect on the integrity of the site, then EN consider that the proposals would be consistent with national and general planning policies.

English Heritage

7.5 English Heritage ("EH") provided written advice to the Council following the listing of the North Pier and the South Pier. That advice appears as Appendices 8 and 12 to the proof of evidence of Mr Philip Parker (Document APP/AP28A). At my invitation, EH also appeared at the inquiries to answer a series of pre set questions, prepared in consultation with Dr Moseley, the Listed Building Assessor. All parties to the inquiries were given the opportunity to contribute to these questions, but the questions eventually put to the representative of EH were settled by me. They are contained in Document X/12, and the responses of EH are set out in a note, which I have made Document REP/9.

7.6 The detailed evidence given by EH is incorporated appropriately in Dr Moseley's report. I summarise it very briefly here, in order to provide an overall picture.

7.7 EH have confidence in the Council's judgement and in house expertise in the field of listed buildings. EH have therefore not become involved in the balancing exercise set out in PPG 15 to judge whether the Council's proposals are justified. Bearing in mind the Grade II listings of the piers (which were revisited and confirmed in the light of all additional material provided during the inquiries), EH have concluded that they have no objection in principle to the applications for listed building consent. This is not a neutral view, but a positive one.

7.8 EH consider that the works proposed by the Council to the listed piers are to be judged in the light of the Grade II listing. Any subsequent landside works on the reclaimed areas could have a significant effect on the character of Bridlington Harbour, and EH will take a view on any such proposals if and when they are submitted.

Interested party giving evidence in support of the Council's Orders

7.9 Bridlington Town Council heard presentations from both East Riding of Yorkshire Council and BPG before discussing their position on the marina project. They decided to give their full support to the Council's Orders. They determined their position on the Orders without any survey of public opinion.

7.10 Whilst there can be no absolute guarantee that the proposed development will address the level of deprivation in Bridlington, research carried out by consultants engaged by the East Riding Council indicates that the project would alleviate present levels of unemployment and that it would attract new businesses. This would improve employment prospects for young people. The Town Council hope that it would also improve the chances of an improved road link for Bridlington to the M62.

7.11 The refurbishment of the Spa and the development of Bridlington's conference business would also be important benefits of the scheme. The Town Council do not simply support the marina. They strongly support the landside development. They see this as essential to the economics of the scheme.

7.12 There would be some disruption during construction, but people find building taking place when they go on holidays abroad. Some people might be attracted to Bridlington by the opportunity to see progress being made during construction.

Interested parties offering written support for the Council's Orders

7.13 Written support for the Council's Orders from interested parties for the most part replicates arguments contained in the case for the Council or the case for their supporters.

7.14 Many people interested in sailing, based in Bridlington or elsewhere, argue for the improvement of facilities for leisure sailing in Bridlington, and say they would use the marina if it was created. Of particular note are letters 54 and 65 in Document X/20, both from the Ocean Youth Trust (North East). They say that Bridlington Harbour is not presently accessible to their sail training ketch, *James Cook*, but the Trust would make frequent use of the marina if it were built. Bridlington is situated between two major tidal gates - the Humber Estuary and Flamborough Head. A passage from the Humber north to Scarborough (at present the nearest port accessible to the *James Cook*) is approximately 50 nautical miles. Travelling at an average 4 to 5 knots, this is a minimum 10 hour passage, which makes it almost impossible to carry the tide out of the Humber and around Flamborough Head. This also makes the passage out of the reach of an average yachtsman day sailing. The creation of Bridlington Marina would open up cruising grounds off the east coast for vessels sailing between south and north. It would also provide a valuable refuge in adverse weather conditions, and provide a worthwhile alternative to the Humber, which is a very busy shipping estuary with large tidal movements. In fact, the objectors dispute the claim that Bridlington Harbour is not presently accessible to the *James Cook*. They produced a photograph (Document OBJ/147) of the vessel berthed in Bridlington Harbour.

7.15 Many organisations and individuals with fishing interests support the Council's proposals. Both the Bridlington and Flamborough Fishermen's Society and the Shell Fishermen's Cooperative argue for the improvement of existing facilities, but each organisation is concerned about possible increases in costs. Longstanding local commercial boat owners also argue that facilities need to be improved, and make the point that the finances of the Commissioners do not appear to make that a realistic possibility under their management. Bridlington Trawlers and Fishgate commend the imagination and flexibility shown by the fishing industry in Bridlington in transferring attention to shellfish landings, but suggest that handling and marketing of the catch needs to be improved. The proposed development could offer the opportunity to make Bridlington a centre of excellence, at the same time looking to develop the processing of the catch locally to add value and increase employment opportunities in the local economy.

7.16 Letters were sent to the inquiries (Letters 72 and 82 in Document X/20) suggesting that Dutch and Belgian trawlers might be able to weekend and change crews in the proposed marina, but it is common ground that the size and draught of these vessels would make that impossible (Document OBJ/191).

7.17 A local estate agent with 32 years' experience of the property market in Bridlington confirms that residential accommodation on the proposed marina would find a ready market. A local businessman with hotel and catering interests states that he is ready to invest in creating further employment in the

area if the marina development proceeds. Northern Powerboats of Sheffield indicate that they would be ready to move their 13 year old, five employee business to the marina if the development proceeds.

7.18 Written support for the project as a key element within the Regional Economic Strategy Humber Action Plan is offered by the Humber Forum, the public/private sector partnership for sub regional economic development and regeneration. (Letter 64 in Document X/20). The project is also supported for its employment creation potential, economic benefit and its improvement of tourist and conference facilities by Timothy Kirkhope, the MEP for Yorkshire and the Humber (Letter 90 in Document X/20).

7.19 The environmental organisation, KIMO, supports the proposed development because a new marina would provide proper disposal facilities for waste products in accordance with EU Directive 2000/59 on Port Reception Facilities for Ship Generated Waste.

Interested party giving evidence objecting to the Council's Orders

7.20 The decline in the number of large racing yachts berthed at Bridlington (from 36 in 1975 to 2 in 2001) has little, if anything, to do with the facilities offered at Bridlington. Rather, it is a result of the ease of travelling to the south coast of England, where more competitive and varied racing is on offer.

7.21 The park and ride scheme at Carnaby might be in line with Government policy, but it would not be attractive to marina users, who would expect parking to be available at the marina. Moreover, the routes planned for use by the park and ride service and for excursion coaches (shown on Document APP/137) would substantially reduce on street car parking on the south side of Bridlington, and would do nothing to take visitors to the town centre, where the revival of Bridlington is meant to take place.

7.22 The marina facilities would have no effect on the regeneration of the town centre. While there would be a market for housing on the marina, the shops proposed would only compete against existing town centre shops and harbour side shops, producing more vacancies. Visitors to Bridlington do not come for the shopping. Many of them pass major retail developments on their way to Bridlington. If the retail offer of Bridlington needs to be improved (which it does), this should take place not on the marina but on a Council owned site of around 6000 square metres, currently used for car parking at Hilderthorpe Road/Springfield Avenue/Quay Road. This site could provide large shopping units with multi storey parking above them. It would not be in conflict with the Local Plan, which, in Policy BRID 32, simply rules out development proposals which would prejudice the Council's eventual aim of decking the car park.

7.23 The marina would be unlikely to attract 500 boats in its initial five years of operation. It would cause disruption and inconvenience for up to ten years to both local residents and to visitors, to such an extent that it would dissuade visitors from coming to Bridlington. A marina of around 160 berths could be created within the existing harbour, and would be preferable.

7.24 Based on 35 years' experience as a Chartered Surveyor advising clients in Yorkshire and Humberside, it is argued that the financial return to the Council from selling off the development land created under the Works Order would be substantially less than the overall cost of developing the marina.

Response on behalf of the Council

7.25 The assessment that a marina of only 160 berths is required is not based on any survey. The need for commercial development to support a marina is not challenged. The topside development is not before the inquiries, and the comparative valuation exercise carried out is therefore irrelevant.

Interested parties making written objections to the Council's Orders

7.26 Written opposition to the Council's Orders from interested parties for the most part replicates arguments contained in the cases of the objectors to the Council's Orders.

7.27 A letter from the Chairman of the Bridlington Angling Boat Owners Association opposes any take over of the harbour by the Council, and supports the continuation of management by the Commissioners. It contends that 24 hour access to the harbour would not be achievable, because of the large amount of sand movement in the area, the prohibitive cost of dredging that would be necessary in the new harbour entrance, and the impossibility of dredging seawards from the entrance (Letter 16 in Document X/20).

7.28 People currently engaged in commercial fishing from Bridlington fear that the need for additional security for yachts in the marina would result in restrictions on night time working by fishermen.

7.29 The Council's plans would involve building over the beach to the side of the South Pier, which is an important nursery area for sea birds.

7.30 The need for piling during construction could cause damage to the Spa.

7.31 The Council's case is based on a misconception, because there is no evidence at present of economic decline in Bridlington.

Response on behalf of the Council

7.32 It is not claimed that 24 hour access to the new harbour would be available; but access would be substantially improved compared with the present position. The improvement of access would not involve the need to dredge seawards from the new harbour entrance.

7.33 The proposals of the Council are designed to achieve improvements in the facilities available to fishermen. The need for security of vessels in the marina would not inhibit night time working by fishermen.

7.34 Alternative nursery areas would be available for sea birds.

7.35 The refurbishment of the Spa is one of the aims of the overall regeneration scheme. Clearly, steps would be taken in the development process to ensure that the structural stability of the Spa would not be put at risk.

7.36 There is substantial evidence of economic decline in Bridlington, for example the way in which unemployment levels in the town are increasingly greater than the national percentage level of unemployment. This has happened despite the facts that, until 1999, Bridlington was able to access regional selective assistance grants from the Government; an Objective 5B programme has been in place since 1994; Bridlington is currently within the EU Objective 2 areas; and the town received £2.74 m from a successful Round 3 SRB bid.

Interested parties providing information regarding the Council's Orders

7.37 Following the giving of notice on a without prejudice basis to the organisations prescribed in paragraph 10 (a) of Schedule 5 to the Applications Rules in the circumstances set out in paragraph 2.70 above, the Ramblers' Association submitted representations to and appeared at the inquiries. They neither object to nor support the Council's scheme. They accept that the definitive footpath along the Chicken Run Jetty and across Clough Hole are outside the limits of the inquiries, and will be dealt with at a later stage if development is proposed affecting those areas. They accept that the development would have little effect on footpaths further down the coast. They are pleased that the general public would be allowed access to walk the proposed southern breakwater, across the lock, and the proposed new fish quay, and that this will be accessible for people who are wheelchair bound. With regard to the possibility of restrictions within the proposed marina, they would hope that the Council and the proposed new Authority would not abuse the power to impose them. The Ramblers' Association express their reservations about the late stage at which they were notified of the proposals, but they understand the Council's position on that.

Provision of written information regarding the Council's Orders

7.38 Representatives of ten other local authorities provided information about the effect which the development of a marina had had on their areas. Their letters appear as letters 5,6,7,8,9,17, 20,22, 23 and 26 in Document X/20. All speak positively of the impact of marina and associated developments on their areas. The developments in question are all at different stages, and the circumstances differ in each case. Some of those letters appear to suggest that they had been requested by the Inspector. This is not the case. Appropriate weight has been attached to them only as written representations.

7.39 The RNLI sent five letters at different stages during the inquiries. Those letters appear as items 1,2, 50 and 51 in Document X/20 and as Document APP/145. The definitive position of the RNLI is contained in letter 51 dated 15 February 2002 from their Chief Executive. The RNLI are not against the marina, and would wish to keep their options open to determine the most effective launch site for the offshore lifeboat if the marina development proceeds.

7.40 Two letters received during the inquiries sought to challenge the claims of objectors that the sea is rougher to the south of the harbour entrance as the benefit of the shelter of Flamborough Head is lost. Both the RNLI (letter 50 in Document X/20) and a very experienced local skipper and boat owner (letter 89 of Document X/20) deny this.

7.41 Mr Shlomo Downen, a local healer and teacher, expresses concern that the inquiries, and indeed the issue of the building of any marina, might be seen as an adversarial legalistic contest, resulting in winners and losers. He believes that it is important that people should approach the inquiries as an opportunity to take part in a cooperative and mutual enterprise, undertaken by all parties with the support of experienced professionals, resulting in greater understanding of the issues for the benefit of all concerned.

7.42 It is important that people feel that they can influence the decisions affecting their community; and that the Council, accepting their democratic rights, should also operate with sensitivity to the feelings of all groups of local people. It is important that any marina eventually built is seen as part of Bridlington, and not as an alien development forced on an unwilling community. It is important, above all, that the outcome of decisions taken following the inquiries, is seen as a basis on which the community can move forward together to achieve the best possible future for Bridlington.

7.43 The BPG submitted a letter from Chris Mc Cafferty, MP for Calder Valley (letter 94 in Document X/20), in which Ms Mc Cafferty states that she would hate to see any development which would adversely affect the beach at Bridlington, but that the Parliamentary protocol is that Members of Parliament deal only with people in their own constituency.

8. The case for the commissioners' order

The material points are:

Background

8.1 Bridlington Harbour is a working harbour, which serves a diverse group of users - commercial fishermen, leisure fishermen, the RNLI, the Government in relation to fishery protection work, leisure sailors, and the general public, both local and visiting, who wish to take advantage of pleasure craft operating from the harbour, or simply to experience the maritime environment offered by a small, friendly working harbour.

8.2 For more than 300 years, the harbour at Bridlington has been managed by the Commissioners. It is operated as a Trust Port, one of almost a hundred in the United Kingdom. Trust Ports are independent statutory bodies. Each is governed by its own unique legislation, and controlled by an independent board. There are no shareholders or owners. Any surplus of income over expenditure is ploughed back into the port for the benefit of the stakeholders of the trust. These are all those using the port.

The Trust Ports Review

8.3 The Commissioners' Order represents their response to the Trust Ports Review, which was published in January 2000 (Document ERYC8). It seeks to provide a robust management structure for the harbour at Bridlington, in line with the eight guiding principles of the Trust Ports Review - independence, accountability, openness, selflessness, integrity, objectivity, honesty and leadership.

8.4 The Commissioners believe that they have always operated to those principles; but the new arrangements proposed in the Commissioners' Order would embed even more deeply the ideals of the Trust Ports Review.

8.5 The Commissioners have always been independent of any outside authority or agency. They have done all they could to cooperate with other organisations, for example, their work with the Council to replace the old footbridge across Clough Hole in a way which retained public access across the area while benefiting harbour users by the creation of new facilities. Their independence is demonstrated, however, by the way in which, when they were not satisfied that the Council's marina proposals were economically viable and would operate for the benefit of all harbour users, they objected to those proposals, even though, as members of the BRP, they had previously contributed to the funding of feasibility studies for development.

8.6 The Commissioners' Order would strengthen this independence, by removing the present requirement to have Commissioners representative of certain interests. Each of the ten Commissioners (plus the Chief Executive) provided for in the Order would be appointed on an independent basis. The range of skills of those appointed as Commissioners, and their commitment to act in the best interests of the harbour would ensure that the interests of both beneficiary and non-beneficiary stakeholders (in the terms of section 4.2 of the Trust Ports Review) were respected in the future management of the harbour under the Commissioners' Order.

8.7 The Commissioners have always been accountable to harbour users, operating a consultative process through regular meetings, at which harbour users are given the opportunity to ask questions on any matter pertaining to the operation of the harbour. Article 16 of the Commissioners' Order would give formal status to this process.

8.8 The consultative arrangements which exist also mean that the Commissioners operate in an open manner. In addition, all meetings of the Commissioners are minuted; the press and public are invited to attend the quarterly full board meetings, which are advertised in the local newspaper and around the harbour; and the Commissioners' annual accounts are made widely available. It is intended that these arrangements would continue if the Commissioners' Order is confirmed.

8.9 It is accepted that the Commissioners' Order has not been the subject of consultation with harbour users, or with the people of Bridlington. Nor did the Commissioners consult harbour users before objecting to the Council's Orders. All appropriate statutory notices were, however, given of the submission of the Commissioners' Order.

8.10 The Commissioners devote a great deal of their time to the management of the harbour. They are not paid for this work. That situation would continue if the Order were to be confirmed, because, at the express request of the Commissioners, the power to pay anything other than expenses to the Commissioners is to be withdrawn (see paragraph 8.24 below).

8.11 The Commissioners have always acted with integrity and honesty. This would continue if their Order were confirmed. Schedule 1 to the Order would require each Commissioner to make a full disclosure of financial and other interests, and this is reinforced in paragraph 16 of Schedule 2 to the Order, which would prohibit a Commissioner from taking part in any deliberation or decision in which he or she had a direct or indirect interest. Article 7 of the Order would prohibit a person from acting as a Commissioner until he or she had made the Schedule 1 declaration. The supportive notes for the guidance of Commissioners which would be used with Schedule 1 are set out as appendices to Document A/P3. There is nothing comparable in the Council's Orders.

8.12 The balance of expertise, knowledge and experience maintained by the Commissioners on the board, allied with the openness and accountability demonstrated in their operations, means that they act with complete balance and objectivity. The move from representative to independent board membership under the provisions of the Commissioners' Order would reinforce this.

8.13 The Commissioners have always provided leadership in their management of the harbour. This has been demonstrated by their recognition at an early stage of the impact on the harbour of the decline in the fishing industry, and their consequent successful search for alternative sources of shore based income. Similarly, over the years the Commissioners have accommodated changes in the needs of the various harbour users, and have modernised the harbour facilities for betterment and improvement of working.

8.14 To ensure continuity of this leadership, the Commissioners' Order provides that their present Chairman will retain his position until at least 30 April 2005. It is accepted that paragraph 9.1 of the Trust Port Review states that reappointment should not be automatic, but this is considered to apply to future appointments under the Order rather than to transitional appointments.

Precedents for the Commissioners' Order

8.15 The Order has been drafted in similar terms to four other Harbour Revision Orders, and, in accordance with normal practice, had the benefit of informal advice on drafting from the then Department of the Environment, Transport and the Regions prior to formal submission. In particular, it is similar to the confirmed Revision Orders for Fowey and Cowes. The confirmed Order in relation to the harbour at Cowes (SI 2001 No 2183) comprises Document OBJ/138. Article 5 (2) of that Order provides for the existing Chairman to become the first Chairman of the new Authority for a three year term to provide continuity.

8.16 Like the Cowes Order, the Commissioners' Order does not rule out people from appointment as Commissioners on grounds of age. This is because to do so would be regarded as age discrimination. It is understood that the Government no longer supports the recommendations on age contained in section 9.3 of that Trust Ports Review, though it is accepted that those recommendations have not been formally amended or withdrawn.

Other matters

8.17 In a letter dated 10 July 2001, addressed to the Secretary of State for Environment, Food and Rural Affairs, the Council's Parliamentary Agents state that, *"Our clients take no particular issue with the way in which the Commissioners propose to implement the recommendations of the Trust Ports*

Review ...". That being so, it is inappropriate for the Council now to suggest that the Commissioners' Order does not comply with the recommendations of the Trust Ports Review.

8.18 The Commissioners have demonstrated over many years that they can run the harbour successfully. It has been run in a financially successful way, with a steady and continuous excess of income over expenditure. It is accepted, however, that the Commissioners had a deficit of £36,517 in 2001. The harbour is successful operationally, with an enviable safety record, and a strong relationship with all relevant Government Departments.

8.19 The Commissioners' Order deals only with the harbour at Bridlington. To go outside that remit would be beyond their powers. Social engineering is not part of their agenda. The sole test to be applied to the Commissioners' Order is whether it responds effectively to the Trust Ports Review.

The future of Bridlington Harbour under the Commissioners' Order

8.20 If the Commissioners' Order is confirmed, it would be the intention of the Commissioners to proceed with a smaller, in harbour marina, providing 120 to 150 berths. In 1991, the Commissioners saw the advantages of providing permanent floating moorings with pontoon access within the existing harbour. They considered that the first phase of such a scheme should be the infilling of Clough Hole. The Clough Hole works were undertaken, but their completion coincided with the BRP's suggestion of a larger marina to the south of the existing harbour. The Commissioners originally supported the BRP's scheme, but withdrew their support as it became clear that the scheme would compromise many of the existing harbour users, with only limited benefit to a few. The Commissioners consider that a marina with a water retained area within the existing harbour between the Crane Wharf and north of the Chicken Run Jetty would benefit all harbour users and the town of Bridlington. Their consultant engineers have been instructed to produce initial details and costings for such a scheme for consideration and approval by the Commissioners. The minute of the Commissioners authorising this work was passed on 23 April 2002, and is contained in document A/6.

8.21 There has been no detailed costing or investigation of funding for this proposal at the present time. The Commissioners have been concentrating their efforts on opposing the Council's scheme. A provisional cost of £5m seems likely, however. It is accepted that the borrowing powers of the Commissioners under their Order would be limited to £2m, but there is power under Article 13 for further sums to be borrowed with the consent of the Secretary of State.

8.22 It is accepted that previous schemes developed by or for the Commissioners have all involved development to the south of the South Pier, as indicated in Document APP/154, and that all of them have involved some landfill. Consideration of a scheme involving a half tide sill has been opposed by fishermen in the past, but that was in the days when many trawlers were berthed in Bridlington. The situation is very different now.

8.23 The Commissioners seek the opportunity to continue to operate Bridlington Harbour as a trust port for the benefit of harbour users and the local community.

Proposed modifications to the Commissioners' Order

8.24 The Commissioners ask for the confirmation of their Order, as modified by the two amendments requested in Document A/7. One is a minor drafting amendment to Article 5(2). The other is an amendment to paragraph 21 of Schedule 2 to the Order, to remove the possibility of Commissioners receiving any payment (other than expenses) for the discharge of their duties.

9. The cases of the supporters of the commissioners' order

The material points are:

9.1 Bridlington Harbour is the focal point of Bridlington. The town developed in its present location because of the existence of the harbour. The town and the harbour gain from the separate existence of one another.

9.2 Over the years, there have been various attempts by the town (in the shape of the relevant body exercising local government functions in the area) to take over responsibility for the harbour. These efforts have been successfully resisted. This attempt should meet the same fate. It is driven by an obsession to take over the harbour, rather than by any real attempt to achieve socio-economic change.

9.3 The Commissioners' application for confirmation of their Order stands apart from the other Orders before the inquiries. It would have been made whether or not there were any applications from the Council. It represents a response to the Trust Ports Review. That is its sole aim. It is not within the remit of the Commissioners to seek to achieve socio-economic change in Bridlington. If their Order would not achieve that, they should not be criticised in that respect.

9.4 The Commissioners' Order would deliver continuity of administration at one of Bridlington's premier assets, the harbour. It would allow a friendly and efficient team to continue to provide an effective service to people who use the harbour. That team is of a manageable size, which enables it to be responsive on an individual basis. Larger units lose both flexibility and informality in search of increased efficiency.

9.5 Over the years, the Commissioners have reacted to changing circumstances in an effective way. They have spent both capital and revenue on repairs, maintenance and improvements at the harbour. As necessary, they have sought further powers from Parliament as winds and tides took away the land to which the piers were attached, or as improvements were required. Over time, they have used the latest technology available to them to make the piers stronger, changing from wooden to stone piers in the early nineteenth Century, being the first to use cast iron sheeting in 1818, and being among the first to use concrete block construction in the mid nineteenth Century. The Commissioners are a known and valued organisation, and should not be replaced by a new Authority of which nothing is known.

9.6 The Commissioners' Order would ensure that the harbour would continue to be financially viable, with free public access, operated at no cost to the Council tax payers of the East Riding of Yorkshire. The Commissioners would be neither financially dependent on the Council, nor guided by the Council politically. They would continue to be truly independent.

10. The cases of the objectors to the commissioners' order

The material points are:

The Order is not in accord with the principles of the Trust Ports Review

10.1 The Commissioners' Order would provide for the existing Chairman to become Chairman of the reconstituted Commissioners. This is not in line with section 9.1 of the Trust Ports Review.

10.2 The Order contains no provision requiring newly appointed Commissioners to act independently, and no provision to the effect that a member who failed to do so would be disqualified from holding office.

10.3 There is no requirement in the Commissioners' Order for members to retire upon reaching the age of 70, nor any inhibition on the appointment of a candidate who would reach the age of 65 in his or her first term of office. This can lead to cosiness and complacency and a managing body with a high average age and a lack of new skills, the vices referred to in the footnote to section 9 of the Trust Ports Review.

10.4 There is no provision in the Order to recognise the interests of non beneficiary stakeholders, as advocated by section 4.2 of the Trust Ports Review. This is not an issue about appointing non beneficiary stakeholders as Commissioners, but about how their interests would be reflected and protected.

10.5 While the Council's agents have indicated that the Council took no particular issue with the Commissioners' Order regarding the implementation of the Trust Ports Review, this was a general statement, made in July 2001. It was clearly to be read in the light of the Council's subsequent statement of case on the Commissioners' Order. This was dated 27 September 2001, and made clear the points that the Council wished to raise regarding non-compliance with the Trust Ports Review. The Commissioners can have been in no doubt about that matter for a period of ten months before they had to make their case at the inquiries on 16 July 2002.

10.6 Whilst the evidence of the Commissioners was to the effect that their Chief Executive (referred to in Article 4 (1) (b) of their Order) would be the Harbour Master, the provisions of paragraph 23 of Schedule 2 to the Order are to the effect that references to the Clerk in any local enactment or document should be construed as a reference to the Chief Executive. The Order is therefore unclear on this point.

Response on behalf of the Commissioners regarding alleged non-compliance with the Trust Ports Review

10.7 The Trust Ports Review provides guidelines, not a straight jacket. The relevant Government Department raised no drafting points on the Order which have not been addressed when it was submitted for comment in advance of formal submission.

10.8 As regards compliance, the Council's own statement of case indicates that, *"It is accepted that on the face of it the Commissioners' Order is also broadly compliant except importantly in regard to the appointment of Chairman"*.

10.9 It is not accepted that there is any lack of clarity in the Commissioners' Order regarding the Chief Executive. The person appointed as Chief Executive would undertake roles historically ascribed to the Clerk.

The Order would lead to conflict, duplication and confusion, to the detriment of the efficient operation of the marina and harbour

10.10 The confirmation of the Commissioners' Order alongside the Works Order and the Empowerment Order (assuming that those two Council Orders were confirmed) would mean that two

separate bodies would be responsible for the harbour on the one hand and the marina on the other. Witnesses for both the Commissioners and the Council have agreed that this would be unworkable, and that the Secretaries of State are faced with a stark choice between the Council's and the Commissioners' respective Orders.

10.11 The creation of two bodies would lead to:

- duplication of staff and resources
- potential conflict between commercial and leisure interests
- potential danger for vessels entering and departing the marina and harbour
- potential conflict between the two authorities leading to possible dispute and delay to the marina project.

Delay to the marina project could cause loss of available grant aid, which would not be in the public interest.

Response on behalf of the Commissioners regarding alleged conflict, duplication and confusion

10.12 All these problems can be avoided by the confirmation of the Commissioners' Order and the rejection of the Council's Orders.

There is no realistic prospect of the Commissioners proceeding with a marina scheme

10.13 Until they decided to object to the Council's Orders, the Commissioners had been supporting a marina scheme to the south of the existing harbour. This was in line with schemes prepared for them in 1974, 1980 and 1984 which are shown on document APP/154.

10.14 Early in the inquiries, the Harbour Master expressed his personal preference for a scheme to the north of the harbour. The Chairman of the Commissioners said that there was a divergence of view among the Commissioners, with some preferring a scheme to the north, and some preferring a half tide sill within the harbour.

10.15 The decision which now appears to have been taken by the Commissioners, and which is recorded in Document A/6, is not a decision to proceed with a half tide sill scheme, but a decision to *"approve in principle to commission a scheme for an inner harbour water retained basin when circumstances allow"*. This is a considerable distance away from a firm decision to proceed with a scheme.

10.16 The Commissioners have no details on costing or the funding of such a scheme. They were prepared to agree to the Council's provisional estimate of £5m; but would have borrowing powers of only £2m without the consent of the Secretary of State. They have no money of their own set aside to make up the difference, and have made no approach to seek external grants to fund the project.

10.17 The proposal for a half tide sill would only provide a marginal improvement to boating facilities in Bridlington. That assessment is based on Figure 1 attached to Document O/P1, which shows the location of the sill as deduced from the Commissioners' evidence. It is accepted that, if the sill ran to the southern end of the Crane Wharf rather than the northern end, the marina would have slightly increased capacity. Regardless of that, however, it would require land based support facilities, including car parking. The only possible area for such facilities would be at the western end of the harbour, on Gummers Wharf, an area already heavily used for harbour related activities. The most likely solution would be to deck over Gummers Wharf, but this would be expensive and unacceptable in planning and environmental terms. It is accepted that there are car parking facilities near to the harbour, which could assist in meeting the need for car parking which would arise from an in-harbour marina.

10.18 Much more work would be needed before a half tide sill could be regarded as a realistic proposal.

Response on behalf of the Commissioners to the possibility of their achieving a marina development

10.19 The Commissioners are more than interested in the development of a half tide basin, and this is being further explored. The preparation of the case for these inquiries has been their first priority.

The Commissioners' Order would not, by itself, bring about the necessary socio-economic regeneration of Bridlington

10.20 Bridlington desperately needs effective economic regeneration. The Council's proposals would achieve that.

10.21 On the other hand, the Commissioners' Order limits itself to reconstituting the Commissioners. It seeks no powers to promote a scheme similar to the Council's, or indeed any other regeneration initiative. The half tide sill scheme, in which the Commissioners have expressed an interest at a late stage during the inquiries, would have no associated additional land based development to enhance the economy of Bridlington.

Response on behalf of the Commissioners to the alleged lack of regenerative effect of their Order

10.22 The Commissioners' Order is promoted to achieve compliance with the Trust Ports Review. It is not their business to set out a policy for the socio-economic regeneration of Bridlington.

Written objection to the Commissioners' Order

10.23 In their written objection dated 15 August 2001, the RYYC object to the Commissioners' Order on the basis that it is the Council's Orders which would afford the best prospects for the future of sailing at Bridlington, as an important contribution to securing the economic well being of the area. The RYYC contend that the Commissioners' Order is without merit, is not needed, and would lead to conflict, duplication and confusion, detracting from the opportunity for regeneration in Bridlington.

10.24 In a further written submission, received on 19 July 2002, the RYYC substantially support the Council's grounds of objection to the Commissioners' Order. They say that the half tide sill scheme is impractical, and would not satisfy the essential requirements for a marina. It would contribute nothing to the economic regeneration of Bridlington, and represents a belated and desperate attempt by the Commissioners to be seen to be providing an alternative to the Council's scheme. In paragraph 22 of Document A/P1 (Mr Wright's evidence), it is suggested that the Commissioners have had in mind since 1991 the provision of floating moorings with pontoon access in the existing harbour. This is completely at odds with the Commissioners' support until 2000 for a scheme south of the harbour, with their earlier evidence to the inquiries, and with their unwillingness to consider half tide sill proposals made to them in the past by the RYYC.

10.25 The continuation of trust port status would offer no special benefits to Bridlington. It has failed to serve the port in the past, when compared with the success which other ports and marinas along the East Coast have achieved, whether municipally owned, in private ownership or governed by a statutory board.

10.26 The appointment of "new Commissioners" under the Commissioners' Order is left in the hands of the existing Commissioners. The process by which it would be achieved is not clear.

10.27 There is no particularly special quality of helpfulness and friendliness about the staff at Bridlington Harbour. These are qualities found widely in ports. Similarly, staff at all ports should liaise effectively with other statutory and voluntary agencies.

Response on behalf of the Commissioners to the written objection to their Order

10.28 It is not the case that other East Coast harbours are as financially successful as Bridlington. Scarborough, for example, is losing money.

11. Conclusions

11.1 Having regard to all the foregoing considerations, I have reached the following conclusions, references being given in square brackets to earlier paragraphs of this report when appropriate.

11.2 I deal first with the various legal submissions set out in paragraphs 2.39 to 2.127 above. They will require detailed legal consideration, but I set out my own views on them below. I then reach conclusions on the issues identified by the Secretaries of State in the statement of matters. Finally, I reach overall conclusions on the Orders considered at the inquiries, making recommendations regarding conditions on the applications for deemed planning permission and listed building consents.

Legal submissions

11.3 As regards **the byelaw making power contained in Article 24 of the Empowerment Order** [2.40 to 2.42], Article 2 of that Order defines "the harbour map" as showing the seaward extent of the harbour. The landward extent is defined by reference to "the operational area". I therefore do not agree with Mr Seymour that any byelaws would be unenforceable because their area of operation would be uncertain.

11.4 Nor do I accept that the byelaw making power in the Empowerment Order would be defective because it purports to go beyond "good rule and government and the suppression of nuisances" under of the Local Government Act 1972. It is the machinery provisions for making byelaws contained in Sections 235 to 238 of the Local Government Act which Article 24 (6) seeks to import, not the actual byelaw making powers. Article 24 itself sets out the subjects which could be covered in byelaws made under it. Those topics would not be limited by the provisions of the Local Government Act.

11.5 Finally, I do not accept that byelaw making powers under the Transport and Works Act cannot be authorised if they infringe public, private or customary rights. I agree with the Council that an Act of Parliament can override public, private or customary rights, and that the same is true of subordinate legislation (such as the Empowerment Order) provided it is made within the powers granted by the primary legislation under which it is enacted. I see nothing in principle which would mean that these byelaw making powers were inconsistent with Article 1 of the First Protocol to the European Convention on Human Rights. That is not to say that it could not subsequently be argued that any specific byelaw made under Article 24 of the Empowerment Order contravened Article 1 when that specific byelaw was either being made or was being relied on.

11.6 I conclude that the byelaw making powers in Article 24 of the Empowerment Order are not defective.

11.7 As regards **the contention that the Works Order contravenes the provisions of Article 11 of the European Convention on Human Rights by denying freedom of assembly and association on land customarily used by the public for that purpose** [2.43 to 2.45], I agree with the Council that freedom of association concerns "*the right to form or be affiliated with a group or organisation pursuing particular aims*" (Mc Feeley v UK (1980) 20 DR 44 at 98). Freedom of assembly "*is applicable to private meetings and to meetings in public thoroughfares, marches and sit ins. There is, however, no indication that freedom of assembly is intended to guarantee a right to pass and repass in public places, or to assemble for purely social purposes anywhere one wishes.*" (Anderson v UK (1998) EHRLR 218 at 221).

11.8 I conclude that the recreational use of a beach is not within the scope of Article 11, and that the compulsory acquisition of land under the Works Order therefore would not contravene Article 11.

11.9 As regards **the contention that Article 21 of the Works Order is incompatible with Article 6 of the European Convention and Article 1 of the First Protocol** [2.46 to 2.49], in my view Article 21 would not deprive any aggrieved person of a fair hearing regarding a noise nuisance claim, because it would apply only in cases where there would in any event be a statutory defence under Section 82 (9) of the Environmental Protection Act 1990.

11.10 I conclude that the challenge to the powers to include Article 21 cannot be sustained.

11.11 Turning to **the contention that the Works Order cannot operate to extinguish public, customary and private rights** [2.50 to 2.52], in my view a statutory provision (whether in primary or secondary legislation) can override any inconsistent non statutory rights. Section 5 (1) of and paragraph 4 of Schedule 1 to the Transport and Works Act 1992 provide authority for an Order such as the Works Order to extinguish rights over land (including rights of navigation over water). The Applications Rules require special steps where private rights are being extinguished. Mr Seymour contends that there are private rights, in relation to which that procedure has not been followed. The Council disagree, but say that they would pay compensation to anyone who is able to satisfy them that he enjoys private rights with which the Works Order would be inconsistent. I deal at paragraphs 11.30 and 11.33 below with the only specific cases of private rights not listed in the Works Order raised by individuals claiming to have the benefits of those rights.

11.12 I conclude that the Transport and Works Act 1992 is sufficiently widely drawn to allow the Works Order to extinguish public and customary rights; and, further, that it can extinguish private rights on payment of compensation.

11.13 As regards **the contention that the repeal of the Bridlington Harbour Act 1837 proposed in the Revision Order is beyond the powers conferred by the Harbours Act 1964** [2.53 to 2.56], I do not accept this view. A good deal of the argument in the legal submissions on this point is directed to whether the Act of 1837 and the subsequent 1928 Act were public Acts. I do not consider the answer to that point as being of great assistance. Under Section 14 (2A) of the Harbours Act 1964, a Harbour Revision Order may repeal superseded, obsolete or otherwise unnecessary provisions of local application affecting a harbour. The tests of the availability of powers to achieve the repeals sought by the Council are therefore twofold

- are the provisions superseded, obsolete or otherwise unnecessary?
- are they provisions of local application?

11.14 If the Revision Order were to be confirmed, it seems to me that the Acts and Orders it seeks by Article 8 and Schedule 1 to repeal would be superseded, obsolete or unnecessary. They are of local application. I conclude that they can therefore be repealed by a Revision Order made under Section 14 of the Harbours Act.

11.15 Mr Seymour argued that, if his submission on the alleged lack of power of repeal under Section 14 were not accepted, in the alternative Section 60 of the Harbours Act 1964 would still prohibit the repeals sought by the Council. That is because Section 60 prohibits the repeal or amendment of any provision in a local Act, the Bill for which was promoted by a harbour authority, except on the application of that authority. The Bills for the Bridlington Harbour Act 1837 and the Bridlington Harbour Order Confirmation Act 1928 (which Acts the Revision Order seeks to repeal) were promoted by the Commissioners. The Revision Order is not promoted by the Commissioners - indeed they oppose it. Therefore, under Section 60, Mr Seymour contends that the repeals in the Revision Order cannot be approved.

11.16 I agree with the Council that Section 60 of the Act of 1964 is a free standing Section, which does not limit Section 14. Section 60 deals with Orders made simply to secure amendments or repeals, and does not affect or concern Revision Orders made under Section 14. I therefore conclude that, if the Revision Order is confirmed, there is no inhibition on the inclusion within it of the Schedule of repeals.

11.17 **The allegation that the notice requirements of the Applications Rules had not been properly complied with** was made on a number of bases. I deal with each of them in turn.

11.18 In relation to **the owners of 92 boats who pay an annual fee to the Commissioners for the use of a mud berth in the harbour** at Bridlington [2.23, 2.25 - 2.26], I consider that these owners do not come within the definition of "occupier" under Rule 2 (1) of the Applications Rules. The facts

that no specific berth is allocated and that the Harbour Master can move them from the berth they are using without any notice indicate that these boat owners have a bare licence rather than a tenancy. I conclude that they are not entitled to notice under the Applications Rules.

11.19 In any event, I cannot see that the mud berth owners will have suffered any prejudice by any failure to give them notice. Both the Council and the Commissioners took steps to advise harbour users of the Orders. Eleven of the mud berth owners were sufficiently aware of the Works Order to have submitted objections to or representations on it. Some of them attended the inquiries. The inquiries were in session for just over a year. It is inconceivable that any mud berth owner, over a period long enough to require the renewal of a licence, will not have been aware of the promotion of the Works Order, yet no mud berth owner raised the issue of notice at the inquiries.

11.20 As regards **the interest of the Commissioners in part of plot 16 in the book of reference** [2.23 and 2.27], a point also argued on behalf of the Commissioners [at 2.104 - 2.112], I note that the whole of plot 16 is shown in the land plan and described in the book of reference which were served on the Commissioners in October 2000, even though the interest of the Commissioners in part of the plot is not noted in the book of reference. It is therefore not the case that the second (correcting) notice served by the Council on the Commissioners in August 2001 seeks to extend the area over which compulsory powers of acquisition are sought.

11.21 The notice identifying the Commissioners' interest in part of plot 16 was served out of time, but allowed the Commissioners the full period of 42 days to add to the objection to the Orders which they had already submitted. This was an opportunity of which they took advantage by submitting a bare objection dated 4 September 2001, albeit on a without prejudice basis.

11.22 The Applications Rules are made under Sections 6,7 and 10 of the Transport and Works Act 1992. They govern the procedure up to the stage at which a contentious Order is assigned to be considered under the written representations, hearings or inquiries procedure. The Works Order was the subject of objections, and these were heard at the inquiries. The procedure at inquiries is determined by the Inquiries Procedure Rules, which are made not under the Transport and Works Act, but under the Tribunals and Inquiries Act 1992. They govern the procedure once the Secretary of State has decided to hold an inquiry into an Order.

11.23 The Inquiries Procedure Rules countenance the possibility of amendments being sought to the documents and cases before an inquiry. Rule 15 (8), for example, envisages the amendment during an inquiry of a statement of case, a procedure of which the Commissioners themselves took advantage during these inquiries.

11.24 I conclude that it was open to the Council to serve a further notice on the Commissioners in relation to their interest in plot 16, and to seek leave at the inquiries (as they did) to modify the book of reference to the Works Order to add mention of the Commissioners' interest in part of plot 16.

11.25 The Commissioners were represented by leading Counsel throughout the inquiries, and had every chance to raise every aspect of their objections to the Council's Orders during the inquiries. I do not therefore see that, even if my conclusion regarding service of a further notice on the Commissioners is incorrect, they have suffered any prejudice by the Council's original error.

11.26 As indicated at paragraph 2.112 above, I asked Counsel for the Commissioners to specify any prejudice he considered the Commissioners had suffered by the late notice they had received in relation to their interest in plot 16. The response was that, while the Commissioners had been served with late notice, the public had not; and the public had a right, in appropriate tidal conditions, to dig for bait in the area of plot 16 in which the Commissioners have an interest. The Commissioners therefore regard themselves as prejudiced by the possibility that they may face action from a member of the public seeking to enforce those rights.

11.27 In my view, any public rights of this sort which might exist would be overreached by the Works Order if it were confirmed. I therefore do not see that the Commissioners could face any action from an aggrieved member of the public seeking to enforce rights. In consequence, I do not consider that

the Commissioners have suffered any prejudice as a result of the original failure to recognise their interest in part of plot 16 in the otherwise comprehensive details of the Orders which were served on them at the due time.

11.28 The third challenge to compliance with the notice requirements of the Applications Rules raised the **alleged duty to serve notices on the public in relation to a customary right to dig for bait and to fish** in the area of sea and foreshore around the harbour entrance [2.23 and 2.28]. I cannot see that any people who might enjoy such rights do so as either owners or as occupiers. Nor have I seen any evidence that any such rights which might exist do so as easements or other private rights over land, in each case as defined in the Applications Rules. I therefore conclude that no notice was required to be served on any person enjoying a customary right to dig for bait or to fish.

11.29 Again, if I am in error on that point, I do not see that such persons will have suffered prejudice by the failure to serve them with notice. All necessary general public notices of the Orders were given, and the cases of those who dig for bait and who fish at Bridlington were advanced by objectors who appeared at the inquiries.

11.30 Turning to the case of those who have an **alleged right to collect seaweed and to take sand and gravel from the foreshore** within plot 17 [2.23, 2.34, 2.76 - 2.81], I have not seen evidence which persuades me that these rights subsist.

11.31 It is certainly the case that, on 24 October 1863, the Trustees of Harrington Hudson (deceased) conveyed to Harrington Hudson (the grandson of the deceased) 214 acres of land with the benefit of a licence to take seaweed, gravel and sand from the seashore forming the eastern boundary of the land held by the Trustees (Document APP/AP8 tab 77). On 19 December 1871, the Trustees of Hudson (deceased) sold 41 acres of land comprising the bulk of the residue of the deceased's estate to Colonel Rhodes. This land sold to Colonel Rhodes was said to be affected by (and therefore subject to) the licence to take seaweed, sand and gravel from the eastern boundary of the land which had been retained by the Trustees in 1863 (Document APP/AP8 tab 78). On 2 May 1894 Colonel Rhodes sold the land to Walter Battle, who in turn sold it to Whitaker Brothers Limited in February 1896, subject to the licence (abstracted in document APP/AP8 tab 79). The land was then sold by Whitaker Brothers Limited from (so far as the documents show) February 1897, but in smaller parcels. No reference is made in subsequent disposals to the licence to take seaweed, gravel and sand from the seashore. There is certainly no reference to it in the Land Certificate of the owners of 42 Horsforth Avenue, Bridlington, the specific case argued at the inquiries. Nor is there reference to the licence in their earlier documents of title going back to 1899. The Council suggest that is because there is no evidence that the licence was ever assigned for the benefit of their predecessors in title. It seems to me that the real reason for this, however, was that the property at 42 Horsforth Road is built not on land which ever enjoyed the benefit of the licence (the 214 acres conveyed to Hudson the grandson in 1863), but on land which was subject to the burden of the original grant (the 41 acres sold to Colonel Rhodes in 1871).

11.32 I have no evidence of the extent of the 214 acres of land conveyed to Harrison Hudson in 1863, which enjoyed the benefit of the grant, or of whether the benefit of the licence was assigned to his successors in title. I have thus seen nothing which persuades me that the licence continues to exist.

11.33 Although Document APP/38 provides a reasonably accurate typed version of the memorial of indenture dated 24 October 1863, the only version of the plan annexed to that memorial I have seen is the very poor copy contained in Document APP/AP8 behind tab 77. If the lack of clear plans, or any other inadequacy, has led me into error in relation to the continuing existence of a right for ascertainable individuals to take seaweed, gravel and sand from the seashore, then I do not consider that such rights as might exist have been prejudiced by the failure to give notice to persons entitled to them. The case of Mr and Mrs Kilburn of 42 Horsforth Avenue was fully argued at the inquiries, and can be regarded as representative of any others similarly entitled. I would say that if, contrary to my understanding, they enjoy continuing rights to take seaweed, gravel and sand from the seashore, those rights would only be partially affected by the confirmation of the Works Order, since the whole of the area over which the rights could be exercised would not be affected by the Order. To the extent that

their rights had been diminished, as private rights they would represent a compensatable interest, so long as their existence could be proved. The same would apply to other property owners in a similar position.

11.34 Next, it was argued that **public notice had not been given in relation to the closure of certain alleged public rights of way** [2.23, 2.29 - 2.30, 2.61 - 2.68]. The routes potentially concerned are the Old Lifeboat Slip between the root of the South Pier and the beach, the Spa Promenade pedestrian access slip, and two sets of beach access steps from the Spa Promenade and from the Princess Mary Promenade. I agree with the Council that other routes mentioned by objectors are either not physically affected by the Works Order or would be affected only by the need for temporary possession, which does not require notice under Rule 9(8) of the Applications Rules.

11.35 As regards the routes which would be affected on a permanent basis by the Works Order if it were confirmed, I am reluctant to express what might be regarded as a definitive view on the status of those routes on the basis of the evidence produced at the inquiries. Whilst a good deal of evidence and argument was submitted, it did not include by any means all of the sources which would normally be produced at an inquiry dealing specifically with the status of a claimed right of way.

11.36 If the routes concerned are public rights of way, then the giving of provisional notice by the Council allowed those who were concerned at the prospect of loss of the routes an opportunity to make their objections known. This opportunity was taken by a significant number of people [2.10 and 6.218 - 6.228]. I conclude that their position was thus not prejudiced by the failure to give such notice initially. If those routes are regarded as public rights of way, but if the case for confirmation of the Works Order is nevertheless considered to be made, it is open to the Secretary of State expressly to extinguish them by modification of the Order under Section 13 (1) (b) of the Transport and Works Act 1992. As regards three of the alleged rights of way (the Spa Promenade pedestrian access slip and the beach steps from the Spa Promenade and the Princess Mary Promenade), in my view the provision of alternative routes would not be required if the Works Order were to be confirmed, because the route would then lead to land reclaimed for development rather than to a beach to which the public would have continuing access.

11.37 The final legal submission in relation to the giving of notice regarding the Works Order concerned **the initial failure of the Council to deposit copies of the relevant documents with the organisations prescribed in paragraph 10 (a) of Schedule 5 to the Applications Rules** [2.69 - 2.72]. The Council's position on this arose from the fact that they did not consider the routes concerned to be public rights of way. On 17 April 2002, however, the Council deposited copies of the relevant documents with the prescribed organisations on a without prejudice basis, and arrangements were made for those organisations to make representations or objections to the inquiries. Two organisations took advantage of that opportunity.

11.38 Whether or not the routes concerned are public rights of way, I conclude that the prescribed organisations had an opportunity to make representation to the inquiries, and were not prejudiced by the initial failure to deposit documents with them. I note that the representative of one of the organisations concerned indicated at the inquiries that he shared the view that the organisations had ultimately not been prejudiced by any lack of knowledge of the application for the Order [2.70].

11.39 In relation to **the argument that there is a right of way over the South Pier which would be adversely affected by the Council's Orders**, [2.58 - 2.60], I cannot see that the Council's present Orders have any impact on any public right of way which might exist over the South Pier. It could be that subsequent development proposals, if the Works Order were confirmed, would limit free access to the whole of the South Pier; but that is a matter which could be considered if such proposals were brought forward at a later stage.

11.40 I conclude that any public right of way which exists over the South Pier would not be adversely affected by the proposals of the Council which were before the inquiries.

11.41 As regards **the argument that an application for listed building consent affecting an Order cannot be made after an application for an Order under the Transport and Works Act has been**

submitted [2.73 - 2.75], I agree with the Council that the Transport and Works Act countenances a concurrent procedure, and that there is no statutory qualification on when the application for listed building consent must be made.

11.42 I conclude that there is no inhibition on applications for listed building consent being submitted (as happened in this case) subsequent to the Works Order application. Indeed, precisely that situation is envisaged by Regulation 3 of the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992. The situation arose in this case because the two piers were listed after the Works Order had been submitted for confirmation [4.69].

11.43 Submissions were made regarding **the extent of the Commissioners' ownership of the Old Lifeboat Slip** [2.82 - 2.84]. I agree with the Council that stronger evidence of ownership is normally expected to be provided by documents of title than by historical records; but I do not regard any dispute as to ownership as having a bearing on the merits of the case for or against the Council's Orders. I note, in any event, that this was not an issue pursued at the inquiries on behalf of the Commissioners.

11.44 I conclude that the determination of the ownership of various sections of the Old Lifeboat Slip is not relevant to the merits or otherwise of the case for the Council's Orders.

11.45 As regards the **challenge to the procedure followed by the Council in the appropriation for planning purposes of the Spa Promenade, the Princess Mary Promenade and part of the Foreshore** [2.85 - 2.89], I consider that the criticism made of this procedure arises from the fact that the objectors had consulted a copy of the Local Government Act 1972 which did not include all subsequent amendments. The procedure followed by the Council complied with Section 122 (2) (A) of the Act of 1972. The decision the Council took was one which was open to them, and nobody suggested at the inquiries that it was taken other than in good faith.

11.46 I conclude that, on the evidence I heard, no valid criticism can be made of the appropriation for planning purposes of the Spa Promenade, the Princess Mary Promenade and part of the Foreshore.

11.47 In relation to the **claimed public right of way over the beach between Wilsthorpe and the Old Lifeboat Slip in Bridlington** [2.90 - 2.91], in my view such a right of way is not created by the reservation to the Crown contained in clause 3 of the conveyance between the Crown and Bridlington Corporation of 15 June 1936 (Document APP/AP8 tab 84). The questions whether public notice should have been given in relation to that right, and whether the Order would operate to overreach it, therefore do not arise.

11.48 I conclude that, at least on the basis claimed at the inquiries for its creation, no such public right of way exists.

11.49 As regards the **submission that the effective prevention by the confirmation of the Works Order of the continuation of line fishing from the South Pier represents a contravention of Article 17 of the European Convention of Human Rights** [2.92 - 2.93], I agree with the Council that the right to fish is not a Convention right. I therefore conclude that Article 17 is not engaged.

11.50 As regards the **submission that the case now put amounts to a new application** [2.94 - 2.95], it is clear from the Inquiries Procedure Rules that cases can be amended during inquiries. All amendments to the Council's case were submitted openly in the inquiries, and every effort was made to provide time for the parties to consider amendments before they were expected to respond to them. Objectors to the Council's scheme also amended their cases, and their amendments were dealt with in the same way. I do not consider that amendments requested by the Council to their Orders or amendments made by them to the case for their Orders are so extensive as to amount to a substantially different proposal.

11.51 I conclude that no party has been prejudiced by the process followed at the inquiries in dealing with modifications requested to the Council's Orders or in dealing with amendments to the case for those Orders.

11.52 It was **alleged that the Environmental Statement prepared on behalf of the Council was inadequate** [2.97 - 2.103]. This was because the ES had been limited to the consideration of the impact of the specific works which would be authorised by the Works Order, and did not have regard to the impact of the topside works which could subsequently be carried out on the platform which would be created if the Works Order were confirmed.

11.53 It was only the Works Order which was before the inquiries (in terms of development proposals). If the Works Order is confirmed, any development on the reclaimed land would be the subject of a new planning application and a new environmental assessment. This would not, in my view, be an indirect effect of the Works Order development. It would be a new development proposal.

11.54 Professor Pritchard, the Environmental Assessor, carried out a full review of the ES. He concludes that it is adequate for the purpose of the Works Order. I share his view. I note that this view is also apparently shared by the Environment Agency, EH and EN, as indicated by the appendix to Document APP/RP53

11.55 In relation to Mr Seymour's submission regarding **the tests for confirmation of the Commissioners' Order under Section 14 (2) of the Harbour Act 1964** [2.114 - 2.116], in my view those tests are as set out in Section 14 (2) of the Act. They are to be applied to the Order submitted for confirmation. It is not possible in my view to constrain the issues taken into account in reaching a conclusion under those tests by reading into them limitations which do not appear in the Harbours Act.

11.56 I conclude that the Section 14 (2) tests are to be applied to the Commissioners' Order in the terms set out in the Harbours Act, without any gloss in favour of the maintenance of existing arrangements.

11.57 As regards **the contention that the procedure at the inquiries infringed the right to a fair hearing for the Commissioners' Order** [2.117 - 2.120], I note that this was not an argument advanced on behalf of the Commissioners.

11.58 The decision to hear the case for the Council's Orders and for the Commissioners' Order at concurrent public inquiries was not the subject of any objection by the Council or the Commissioners either before or at the inquiries. Both indicated through their Counsel at the conclusion of the inquiries that they were satisfied that they had had a fair hearing.

11.59 I conclude that the procedure followed at the inquiries was not such as to deny the Commissioners a fair hearing for their Order in contravention of Article 6 of the European Convention on Human Rights.

11.60 The European Convention also figured in the **contention that the inclusion in the Empowerment Order of an upper age limit for the proposed Harbour and Marina Authority members would contravene Article 14** [2.122 - 2.124]. In my view section 9 of the Trust Ports Review (Document ERYC 8) sets out an objective and reasonable justification for different treatment. I therefore conclude that the Empowerment Order would not, if confirmed, infringe Article 14.

11.61 As regards **the contention that the effect of the Council's Orders would be to deny public access to the port at Bridlington in contravention of Article 17** [2.125 - 2.127], I do not consider that it has been shown that the Council seek to rely on a Convention right to justify an interference or restriction with another Convention right. I therefore conclude that Article 17 is not engaged.

The issues identified in the statement of matters

The objectives and likely benefits of the proposed Yorkshire Marina

11.62 Like many English seaside resorts, Bridlington has suffered a substantial reduction in the value of the tourist trade to its local economy [4.3 - 4.8]. Tourism remains, however, the major source of employment in the town [4.8]. Other significant areas of local employment have also contracted in recent years [4.8 - 4.9]. Because of its location, and in particular its distance from the motorway network, there is little chance of attracting substantial new manufacturing industry to Bridlington [4.10]. Unemployment is thus more than double the national level, and the gap between the unemployment level of the town and that of the rest of the country is widening [4.11].

11.63 There is now significant deprivation in parts of Bridlington, and the cost to the public purse of addressing this is considerable [4.12 - 4.13]. Although one objector questioned whether the economic decline of Bridlington still continues [7.31], I consider that the evidence of continuing decline is very clear [7.36].

11.64 A widely based local regeneration partnership (BRP), set up in 1995, has taken a number of initiatives to improve the Bridlington economy, involving capital investment in tourism facilities, improvements to the physical environment and capacity building in the local community [4.14 - 4.15]. These initiatives have been valued by local people [6.71], recognised by the wider world [3.4], and have had some success in attracting visitors to Bridlington [6.130]. But, in reality, they have merely slowed the rate of decline in the local economy, rather than kick starting positive regeneration [4.16 - 4.17].

11.65 There has been a long standing aspiration to develop a marina in Bridlington [4.19]. Over the years, many schemes have been proposed, but have not been achieved because of the difficulty of raising finance [5.3]. Developing a marina is seen by the BRP as something which would create jobs [4.25 and 4.36 - 4.37], widen the visitor base [4.24] and lengthen the visitor season [4.27 and 4.172], benefit the local economy [4.26, 4.28, 4.36 - 4.38], improve investor confidence in the town [4.33 - 4.34] and offer the opportunity to improve both access to the harbour [4.16] and facilities for fishermen [4.24]. The BRP consider that delivering these benefits would achieve their objective of obtaining a positive step change in the economy of Bridlington [4.172]. The specific proposals put forward in the Works Order are also seen as providing an increased number of moorings for leisure craft, a reduction of wave heights in the existing harbour, and advantages for the fish population and for wintering waders as a result of the creation of the new breakwaters [4.81].

11.66 The benefits looked for from the proposals would not accrue, however, simply from the development of a marina. The full range of benefits would be delivered by the creation of land based facilities for marina users, residential, retail and commercial uses, the refurbishment of the Spa and the building of a 100 bed roomed 3 star hotel to support the development of the existing conference trade at the Spa [4.21].

11.67 Because of the complexity of the overall range of proposals, the BRP asked the Council to take the lead in promoting the project [4.20].

11.68 I consider that the evidence supporting the job creation potential of the overall package of development proposals is robust and persuasive. It covers direct, indirect and induced jobs, but makes allowance for the number of existing jobs displaced, and reduces by a recognised formula the weight attached to temporary construction jobs [4.36 - 4.37]. Although objectors claim that many jobs created would still be part time and seasonal [6.128], the figures quoted in the economic impact assessment are in fact full time equivalents [4.36]. A longer season would, in any event, mean that seasonal jobs lasted longer.

11.69 The present visitor profile for Bridlington is of an older, low spending tourist [4.7]. Evidence was produced that users of existing marinas visit significantly more frequently and spend considerably more money than the current typical Bridlington visitor [4.27 - 4.28]. I consider that a successful

marina would generate additional spending in Bridlington, as would increased conference business and extra people living in the houses which are planned as part of the proposed development.

11.70 The present tourist season at Bridlington is virtually limited to the six to eight weeks covered by the main school holiday period plus bank holidays. A marina would extend that period by persuading boat owners to revisit outside the school holidays, both for a normal sailing programme which could be extended from May to September [6.127], and for a potential winter sailing programme such as has been developed at other east coast marinas [6.147]. In addition, much boat maintenance takes place during the winter. I also accept that a marina generates interest from visitors who have no connection with sailing, in just the same way as the existing harbour is a focus of interest for people who do not go to sea [5.16].

11.71 The development of the conference trade in a refurbished Spa, backed by a large hotel would also extend the visitor season for Bridlington. It would offer the opportunity to secure more and larger conferences [7.12]. Conference business already accounts for 20% of the bed nights spent at Bridlington's hotels and guest houses [5.17], and I consider it is reasonable to assume that a larger hotel and improved facilities would enable that business to be increased [4.33]. I accept that there is much competition for conference business [6.131], but there is credible evidence that the town is losing business which would come to it if better facilities were available [4.33]. I note that existing hotel owners, through their representative body, are supportive of the development of what would appear to be competition, because they see the potential for overall increased trade [5.17]. There was no more than a handful of written comments opposed to the development of a large hotel from existing hotel or guest house owners in the area.

11.72 The circumstances of other marinas of which details were provided to the inquiries were all different from and not directly comparable with the situation at Bridlington. It is fair to say, however, that all of them have had a positive impact on the economies of their areas [4.26, 5.3, 7.38]. This accords with the experience of the RYA [5.26]. No evidence was produced from any quarter of a marina which had had a negative influence. Increased spending through wages and salaries of £7.9m per year in Bridlington [4.36] and increased visitor spending of £8.2m each year [4.38] are estimates which were not challenged, and would in my view represent a significant boost to the local economy.

11.73 I accept that the whole package of investment in the marina development and the associated landside development which would be anticipated to follow would represent a scale of investment which has not been seen in the past in the town [4.34]. It is fair to assume that this would serve to improve investor confidence in the area. There is some evidence of investors awaiting the decision on whether or not to proceed with the marina scheme before committing to further employment generating investments in the area [5.13 - 5.15, 7.17].

11.74 Although there was some dispute about the precise level of increased access to the harbour which the marina proposals would deliver [4.46, 4.47 and 6.142 against 6.120], I have no difficulty in concluding that there would be a substantial increase in the proportion of the day during which access at least to the proposed outer harbour would be available.

11.75 The Council's proposals would bring together most of the facilities for fishermen on the proposed Work No 2 [4.63]. At present they are scattered around the harbour (as shown on Document APP/64). The point is made by objectors that the fishermen are helped to some extent by having facilities in different locations about the harbour [6.97]; but the Council respond that the precise location of facilities is a matter of detail about which discussions could take place in the future [6.113]. I concur with that assessment.

11.76 New provision for the fishermen would be funded by the Council as part of the construction of the marina [4.132]. No increase in charges to the fishermen would be required, because the harbour, and the marina when constructed, would be handed over to the proposed new Harbour and Marina Authority debt free and at a peppercorn rent [4.163 - 4.164]. To offer some assurance to the fishermen on that point (which has been a matter of concern to them [7.15]) the Council's lease to the

new authority would require that no increase in landing fees was made for a minimum of five years [4.169].

11.77 The fishermen accept that existing facilities are sub standard [6.59], but many of them would prefer to continue with existing facilities rather than paying an increased charge [7.15]. They are also concerned about the possibility of their activities being limited by proximity to residential properties or to leisure craft which need night security [6.100, 7.28]. The Council say these fears are unfounded [7.33].

11.78 I conclude that the construction of the marina would offer an opportunity to provide new facilities for fishermen in a way which, with detailed planning, could offer an economic advantage to them.

11.79 The proposals would clearly increase the number of moorings available in Bridlington for leisure craft.

11.80 As regards wave heights in the existing harbour, I prefer the expert evidence produced by the Council that wave heights would be reduced by the development proposals [4.84, 6.88, 6.109].

11.81 In relation to the position for fish and wintering waders, the Environmental Assessor concludes that the mitigation proposals in the ES are adequate to avoid damage to fish apart from those which have their habitat in the area which would be physically affected by the development (paragraph 10.33 of his report). In relation to birds, he concludes that their disappearance to new habitats elsewhere would be a significant loss of biodiversity in the town (paragraph 10.28 of his report)

11.82 For the most part, however, I consider that a marina development, with associated investment in related landside facilities, including, in particular, the refurbishment of the Spa and the building of a substantial hotel to serve the conference business of the Spa, would achieve the objective and the benefits which the BRP and the Council set for the proposed Yorkshire Marina and achieve a significant improvement in the economy of the area. It would build on existing strengths of the area. It would have the reach to stimulate further growth in a way which other possibilities considered by the BRP and the Council have not - attractions built at some distance from the town centre would not deliver the same boost to the existing traders who have invested in Bridlington, and wet weather attractions would not generate the same level of employment, nor would they offer the same incentive to improve and extend the conference business of the town [5.6, 6.244, 6.250].

11.83 I conclude that a marina which included marina support services, improved access to the harbour, better facilities for fishermen, the redevelopment of the Spa and the building of a substantial hotel, and housing development would achieve the objective and virtually all the benefits sought by the Council (on behalf of the BRP) from their proposals.

The justification for the proposed works, including the scale and location

11.84 Turning from the principle to the specific scheme put forward by the Council, the works for which authority is sought in the Works Order are limited to the breakwaters, quay walls and lock to create the marina, the enclosure of a protected area of water at the entrance to the marina and the harbour, and the reclamation of an area of some 14.7 hectares below the mean high water mark to provide a potentially developable area of land [2.3]. Neither the Order nor the request for deemed planning permission covers the proposed topside development mix of hotel, housing and commercial uses or even the facilities for the fishermen, the marina support services and the Harbour Master's office. The provision for the RNLI and the RYYC, both of which were shown in the original illustrative documentation produced by the Council, are also not included in the works for which authority is presently sought [4.90].

11.85 The scale of the proposed works would, however, be substantial [4.53 - 4.54], the enclosed water area being three to four times the size of the enclosed area of the present harbour, and the reclaimed land being approximately the same area as the present town centre of Bridlington [6.6].

11.86 The Council seek authority for the construction of a marina capable of berthing 500 vessels. A marina of that size is supported by independent market assessment [4.51 and 6.56]. It is also supported by the RYYC, based on their experience of the demand for berths in the area [5.27]. Whilst this level of potential demand is hotly contested by the objectors [6.47, 6.121 and 7.23], their challenge is based on the individual experience and feel for the market of their witnesses, rather than on any research or any professional basis of knowledge. Vacancies in 1999 at marinas in the north east [6.135] arose from the special circumstances of those locations [6.143].

11.87 Bridlington would be a particularly appropriate location for a new marina, as there is a gap in marina facilities in that area of the east coast [4.29]. This was recognised by the RYA, who identified Bridlington as one of the six key locations around the country in which they sought to create new marinas to mark the millennium [5.25]. Bridlington Bay is an excellent location for day racing [5.22], but it is fair to say that it has fewer attractions as a cruising base [6.122]. It has the advantage of a substantial catchment area within two hours drive [5.18, 5.28]. There is also growth in interest in power boats, which would be able to take berths in the proposed marina [6.143]. The UK's leading marina development and operating companies believe that there is a strong market for a new 500 berth marina and associated facilities at Bridlington [4.31].

11.88 500 berths is also the optimum size for the efficient operation of a modern marina, and for construction at a reasonable cost [4.31]. While it is estimated that it would take nine years or so for the marina to reach its effective capacity [4.32], it would be a mistake to start by building a smaller marina for later extension. Expansion after initial development can prove more costly and disruptive than providing all the necessary facilities in the first place [5.27]. A smaller marina would also incur a greater investment cost per berth [4.40].

11.89 It would be possible to develop a smaller marina within the existing harbour by installing a half tide sill [6.63]. This would provide berths for around 160 boats [6.73]. The Commissioners say that, if the Council's Orders are not approved, they would now investigate this possibility [6.49], though it is not a scheme they have favoured in the past [6.58]. Such a scheme would have its own difficulties, however, as regards, for example, access to and wave conditions in the harbour [6.73], and it would not generate land to provide the necessary ancillary facilities which would be required by marina users [6.146].

11.90 I conclude that there is a sound case for the development of a 500 berth marina at Bridlington. A half tide sill scheme could not deliver a marina of that size.

11.91 The location of the proposed marina was chosen by taking advantage of the work done in previous studies [4.42], considering alternative locations [4.43 - 4.44], and then discussing the interim conclusions with existing harbour users [4.45]. This process led to the rejection of alternative sites to the north of the existing harbour (which would have been nearer to the Flamborough Head cSAC), and to the south of Bridlington at Wilsthorpe (which would have represented a potential competitor location to Bridlington itself, and would have denied the opportunity for joint management of the harbour and the marina).

11.92 I conclude that there is ample justification for rejecting other possibilities and concentrating on the development of a marina based on the existing harbour and an extension to the south.

11.93 Turning to the design of the proposals included in the Works Order, it would provide sufficient space to accommodate a marina of the size justified by the research undertaken on behalf of the Council [4.51]. The marina and harbour (wetside) proposals also meet the concerns about the present harbour identified by harbour users during their discussions on design with the Council's consultants [4.45 - 4.49]. Despite that, objectors raised concerns at the inquiries that the proposed new entrance to the harbour and marina would involve dealing with sea conditions worse than those found at the entrance to the existing harbour [6.78]. This was strongly disputed in written representations by the local Secretary of the RNLI and by a very experienced local skipper and owner [7.40], but the evidence I heard was to the effect that the loss of the lee of Flamborough Head would, in certain conditions, lead to greater difficulty in making the harbour. Against that, however, I note that the

proposed harbour entrance would be 120 metres wide, with a minimum clear channel in the outer harbour of 74 metres [4.46] against the agreed width of the current harbour entrance of 27 metres [4.45].

11.94 Whilst it is possible that a Canch might reform off the end of the proposed east breakwater, this would be lower than the existing Canch, and it could be dealt with by dredging [6.78 and 6.105].

11.95 The proposed breakwaters would be built in rock armour [4.56 - 4.57]. Criticism of the efficiency, effectiveness, safety and hygiene of rock armour were made by the objectors [6.82 - 6.87], but I take the Council's point that rock armour is widely used without apparent difficulty elsewhere [6.108].

11.96 The objectors also raised concerns about the possible adverse effect of the proposed works on the stability of the South Pier [6.90 - 6.94]. These concerns have been considered by the Listed Building Assessor in her report (paragraphs 7.70 - 7.72). I share her view that the measures proposed to be put in place by the Council [6.111] would address any threat to the stability of the South Pier.

11.97 The works have been designed having regard to all relevant guidance, standards and codes of practice, and preparatory work has been taken well beyond what is normal for this stage of a development project [4.65].

11.98 The limits of deviation proposed are normal for a scheme of this scale [4.67]. So long as the overall area affected by the Works Order is considered to be justified, I consider that the limits of deviation would be justified by the need to allow working space and for any movement found necessary during detailed modelling or during later stages of the planning process.

11.99 I consider that certain of the variations proposed by the Council to the works as submitted are justified and acceptable. Those are the omission of the freestanding breakwater [4.58], the variation in the size of the lock [4.60] and the alternative construction method for Work No 2 [4.62]. The other alternative variations to Work No 2 are dealt with at Paragraph 11.194 below.

11.100 I accept the evidence that the development proposed involves no insurmountable engineering difficulties [4.66], and can be delivered at reasonable cost [4.66, 4.131].

11.101 Normally, the landside area for development at a marina is roughly equal to the wet side area [4.35]. In this case, the Council seek to create a landside more than twice the size of the area of impounded water [2.3]. The reason they advance for this is that space is needed for additional facilities required to create the critical mass necessary to achieve the benefits desired for Bridlington [4.35]. The Council make the point that the overall scheme now proposed is similar in size to previous proposals [4.52], but that is of limited assistance in assessing whether the scale of the proposed landside works is justified.

11.102 I consider that the Council have justified (at least in principle) their case to include in the development facilities ancillary to the marina (lavatories, showers, changing rooms etc), improved facilities for the fishermen, a hotel to capitalise on the advantage offered by a refurbished Spa, and an element of housing. I do not consider the alternative hotel site identified by the objectors [6.242] to be large enough to accommodate a hotel of the size required here with all appropriate ancillary facilities. That is the real objection to it, though I also take the Council's point that site acquisition would be necessary, might be problematical, and would certainly involve a period of uncertainty [6.152].

11.103 I am not convinced by the Council's case for the provision of a development platform for shops, offices and commercial or leisure facilities [4.35, 4.103, 4.106]. These are envisaged primarily to provide a base for uses ancillary to the marina, but also to provide a land bridge to the town centre, to ensure that the marina and harbour are linked to the town centre. It may be that such uses would be seen as an interesting development opportunity by developers, as the Council say [4.33], but I have heard nothing to convince me that they are "*necessary as part of the development mix*" [4.52].

11.104 The local Chamber of Trade and Chamber of Commerce (who are supporters of the project) say that the present overall viability of many town centre shops is fragile [5.10], and this is supported by expert evidence on behalf of the objectors that any diminution in their turnover as a result of the creation of additional retail floorspace at the marina could be detrimental to their ability to keep trading [6.22]. I share the view of the objectors that there would not be sufficient uses genuinely ancillary to the marina to take up all the retail floorspace proposed by the Council. I note that the Council would resist any restriction to marina ancillary purposes imposed by condition on the retail use of units created on the development platform [6.38]. I also agree that there would be a real risk that retail uses ancillary to the marina might not be able to trade on a viable basis all the year round [6.23]. I accept the evidence of a very experienced local estate agent and surveyor that new shops would probably cause vacancies elsewhere in the town centre [7.22]. There may well be no vacant purpose built offices in the town centre of Bridlington at the moment [4.35], but nor have I heard evidence of any unmet demand for such facilities [6.135]. I take the point made by the objectors that jobs created in shops, offices or commercial developments on the marina could be created in similar establishments built or brought back into use elsewhere in the existing town centre [6.129].

11.105 I entirely accept that the detailed arguments for the make up of the development which would be carried out on the reclaimed land are matters to be considered with any later application, but I explore the issues here, in outline, as it were, because they have an impact on the size of the area to be reclaimed. The objectors make the point that the intensity of the landside development proposed is less in the case put by the Council to the inquiries than was countenanced in the ES [6.29]. The Council rely on the development framework to establish that the land being reclaimed is not excessive for the level and standard of development sought [6.46]. I am not convinced by the development framework that retail, office and commercial development is required on the marina site to link the harbour and marina with the town centre. Existing shops commence immediately to the north of the present harbour, and there are existing shops only 150 metres or so from the proposed marina. The town centre begins only 250 metres or so from the water area of the proposed marina. It seems to me that the most effective way to increase the chances of the town centre benefiting from the potential trade available from people using a marina would be not to place any competing facilities between the marina and the town centre.

11.106 Because the allocation of land within the proposed reclaimed area is not a matter fixed by the present Order, it is not possible to identify what part or proportion of the reclaimed area is affected by my reservations regarding the amount of landside development which is justified.

11.107 The other justifiable area of concern regarding the construction of the proposed works is in my view the time which the entire project, including the topside development, would take to achieve. The Council envisage that the works which would be authorised by the Works Order would take some 30 months to complete [4.70]. Subsequently, the development of the reclaimed land would take a further seven years, so long as no unexpected problem arose [6.26, 6.55]. The Council's response to the concern expressed at a total development timetable (if all went well) of almost ten years was to say that there was no evidence to indicate that construction itself would be detrimental to local businesses or to tourism. They consider that the construction works themselves would create a certain level of visitor attraction [6.44].

11.108 There may be something in the last point, but I find it hard to see conference business, for example, to which the Council (rightly in my view) attach so much importance, being attracted by such a lengthy construction period. I consider that there is a real risk that Bridlington would have a substantial and damaging loss in its tourism business as a result of the protracted period of building which would take place in a concentrated area close to the town's main hotels, guest houses and resort facilities.

11.109 On these issues, I therefore conclude that the scale of the proposed works is substantial, both in absolute terms and in relation to the size of Bridlington. There is evidence to justify both the scale and location of the proposed marina, however; and I do not consider that any valid criticism has been made of the design in engineering terms. On the other hand, I am not convinced that the size of the

area proposed to be reclaimed is wholly justified by the case put forward by the Council, and I am concerned at the possible impact on Bridlington of the lengthy construction period envisaged.

The case for compulsory acquisition

11.110 I accept that to achieve the development they seek, the Council would need to own all the land affected by the development. They would also need to be able to overreach minor interests [4.174 - 4.175]. I note that the greater part of plot 16 is owned by the Crown Estate Commissioners, but that agreement in principle has been reached to dispose of the Crown's interest to the Council [4.175]. I also note that the Harbour Commissioners have an interest in the balance of plot 16, and that the book of reference would need to be modified to reflect this position [4.175]. For the reasons given in paragraphs 11.24 and 11.27 above, I do not consider that the Commissioners would be prejudiced in any way by the making of this modification, provided that compulsory acquisition is justified.

11.111 I have two difficulties regarding the case for compulsory acquisition. The first relates back to my concern that the case for the availability of a topside area of the total size sought by the Council has not been made out. The second area of concern relates to the timing of the transfer to the Council of any land acquired compulsorily [6.275]. I deal with this second point in detail in relation to the Revision Order at paragraph 11.203 below.

11.112 Subject to those issues, to the extent that land affected by the Order is necessary to build the marina, I conclude that the need for compulsory acquisition has been shown. As regards land which is required to provide a platform for landside development, I am not satisfied that need has been shown to all such land affected by the Order.

11.113 Subject to the point considered at paragraph 11.197 below regarding the timing of any compulsory acquisition, I conclude that the land is not proposed to be acquired before reasonable time. In particular, delays in proceeding with the proposed development might result in the loss of significant grant aid [4.140].

11.114 To the extent that the Works Order is confirmed and deemed planning permission granted for the proposed development, I conclude that a compelling case has been made for compulsory purchase in the public interest [4.140, 4.172].

Compliance with national, regional and local planning policies

11.115 Only the works covered by the Works Order were before the inquiries, and it is only for those works that deemed planning permission is sought [4.89].

11.116 Those works appear to me to accord with Policy E1 of the Structure Plan [4.92, 6.33]. I do not consider that Policy E10 of the Structure Plan offers any support for the works, however. It says that tourist developments within built up areas will normally be permitted [4.92, 6.6, 6.33]. This proposal is not within a built up area. It largely seeks to cover an area of open beach and an area of sea.

11.117 As regards the Local Plan, the works proposed extend for some 200 metres or so beyond the area of sea front defined in Policy BRID 15 and also for some 900 metres out to sea [4.93, 6.11, 6.37]. I do not regard the proposals as in conflict with Policy BRID 16, since I do not regard them as threatening the efficient operation of the harbour or limiting its expansion; quite the opposite, in fact [4.94, 6.10, 6.36]. Nor do I regard Policy BRID 17 as offended by the Council's proposals. It refers to the possibility of a marina being created at Wilsthorpe as one element of a major development proposal. This does not mean, in my view, that no marina can be considered on any other site [4.95, 6.9, 6.35].

11.118 The reality is that (as the Council suggest) the Development Plan pulls in different directions [6.30]. It is necessary to look beyond it at other material considerations.

11.119 One such consideration is the SPG and the development framework approved by the Council [4.90]. These make it clear that the Council is looking for a development of high quality which will add value to the area [4.100]. The objectors make the point (relying on paragraph 3.16 of PPG12) that

substantial weight should be given to SPG only if it derives from and is consistent with the Development Plan, which they say this is not [6.25]. The Council claim that the SPG supplements the Development Plan and evolved from it [6.42]. I share the objectors' view that the SPG and the development framework appear to have been written without substantial regard to the detail of the Development Plan where it was in any way at odds with what the Council wished to create on the reclaimed land.

11.120 Another material consideration to be weighed in the balance is the economic benefit which the Council argue would flow from the carrying out of the development [6.159]. I agree with the objectors that such benefit would flow not from the reclamation, but from the works carried out subsequently on the reclaimed land [6.26]. Such benefits would be less certain, and also more distant in time. They would therefore attract less weight than would otherwise be the case, but they are nevertheless relevant. To evaluate them, however, it is necessary to look beyond the immediate application at the acceptability in planning terms of the eventual topside uses proposed.

11.121 The housing proposed would go beyond the total capacity of land to be allocated for housing in Bridlington under Structure Plan Policy S1 in the period to 2006 [6.3 - 6.5, 6.32]. I note, however, that it would be 2005 before the reclaimed land would be available for development, and I have sympathy with the Council's position on the need for forward allocations of housing land [6.31]. I have no sympathy with their view that this is a brownfield site [6.31 - 6.32, 6.216]. I agree with the Environmental Assessor and the objectors [6.210] that it is a pristine beach, and the precise equivalent of a greenfield site.

11.122 As regards retail use on the reclaimed land, I consider that this would be outside the existing shopping centre and therefore contrary to Policy S 14 of the Structure Plan [6.7] and outside the defined town centre and thus contrary to Policy BRID 22 of the Local Plan [6.12, 6.38].

11.123 Regional planning guidance indicates that the first priority for housing land is the reuse of previously developed land and the conversion of existing buildings within urban areas [4.96]. In relation to retail and commercial uses, Policy S3 of the new Regional Planning Guidance places a clear emphasis on existing city and town centres for shopping, cultural, social, leisure and business services [4.96]. On the other hand there is specific mention of and support for the marina in the regional economic strategy's action plan [6.41].

11.124 It is easier to argue that all the desired uses could be achieved on the reclaimed land within the broader brush approach of national planning guidelines [4.99], though the objectors argue strongly (and with merit in my view) that the landside development proposals of the Council should be subject to the closest scrutiny under paragraph 3.7 of PPG20 [6.16].

11.125 The objectors say that the Council are seeking to obtain permission through the Order process for a development which should have been considered by way of a review of the Local Plan [6.25]. The Council make the point in reply that their proposals have been subject to a similar extent of scrutiny as would have applied at a Development Plan inquiry, the only difference being that, at the end of the process in this case, the Council would be bound to take into account the Secretary of State's recommendations [6.43]. I understand the Council's view on this.

11.126 I conclude that the Council's proposals are not entirely consistent with the Development Plan or with the Regional Planning Guidance. The proposals for the various elements of the landside development which the Council wish to carry out on the reclaimed land would need to be closely scrutinised under paragraph 3.7 of PPG20. I consider that the economic benefit of each element would need to be justified before it could be regarded as acceptable. For reasons dealt with in paragraph 11.105 above, I am not satisfied that a case has been made for the inclusion of shops, offices, commercial or leisure facilities on the reclaimed land.

Whether the proposals are reasonably capable of attracting the necessary funding

11.127 The estimated cost of the works covered by the Works Order is £32.574m at August 2001 prices [4.131]. By March 2003, the Council will have set aside £14m for the scheme, together with

interest earned of £1.814m [4.134]. The Council has also resolved to reserve a further £1.5m per year for four years as a contingency sum [4.134]. The balance of the cost of the scheme is anticipated to be covered by grants from a variety of sources [4.136 - 4.140].

11.128 Although contractual commitments to provide these grants do not exist [6.194], that is a perfectly normal position for a funding agency to take at this stage of a scheme [6.201]. I consider that reasonable assurance is present that the grant aid envisaged will be forthcoming. The Council confirm that no start would be made on the works until it was clear that sufficient grant had been secured to make up the balance of the cost of the works [6.202].

11.129 I am not convinced that previously advanced grant aid will need to be repaid if the development proceeds [6.196, 6.156 and 6.201]. In any event, the amount concerned would represent only a small part of the overall cost of the scheme [6.156].

11.130 I do not believe that the arrangements made between the Council and Yorkshire Water, under which the Council have taken on an uninsured contingent liability, put the development in financial jeopardy [4.143 - 4.147, 6.211 and 6.217].

11.131 As regards the cost of subsequent development on the reclaimed land, the Council's intention is to secure a developer to carry out this work on terms to be negotiated [6.203]. Their previous exploration of the development market in connection with the marina proposals leaves them convinced that developer interest will exist once the uncertainties of land ownership and powers have been removed [4.162, 6.203]. This seems to me to be a reasonably based conviction.

11.132 I conclude that the proposals are reasonably capable of attracting the necessary funding.

The likely effects of construction and operation of the proposed marina on local people

11.133 All the effects outlined below which have any adverse impact must be weighed against the effects of doing nothing, which would be the continued decline of Bridlington [4.40]. They must also be considered in the context of the benefits which would accrue from the marina development, which are identified in this report and on which I have drawn conclusions at paragraphs 11.62 to 11.83 above.

11.134 For residents in the immediate area of the development site, there would inevitably be disruption during the construction period [4.70, 4.72, 4.76, 6.160]. Interestingly, however, there is support for the marina project from some residents who accept that they would be subject to such disruption [5.36]. The Council respond that construction impact would be minimised by the mitigation proposals they would put in place, and that a large part of the construction materials would be brought to the site by sea [6.166]. They point out that the impact of construction contracts can be managed, as happened with the work to the promenades which they commissioned [6.44]. The Environmental Assessor concludes that noise and vibration impacts, visual intrusion during construction, and the impact of the scheme on air and climate would all be at minor adverse or negligible levels of significance (paragraphs 10.38, 10.57 and 10.54 of his report respectively), so long as the recommended mitigation measures are taken. I share his views. I accept that disruption for local residents would be minimised by all appropriate means.

11.135 As regards damage to the work which has recently been carried out to the promenades, I accept that any damage would be repaired [6.71, 6.132, 6.77].

11.136 Some residents would find themselves with different views; there would be the loss of part of the beach; and some residents would have a longer walk to reach the beach. All of those points have been addressed by the Environmental Assessor, and I consider them below when dealing with the visual effects of the proposed works.

11.137 The opportunity for people to fish from the South Pier would be lost if the development proceeds [6.103]. The Council make the point that line fishing from the North Pier would still be possible, and that fishing could take place from the quay wall within the eastern breakwater. The Council say that it might also be possible to create fishing platforms along the breakwaters [6.119].

The Environmental Assessor regards the impact on sea fishing and bait digging as undesirable (paragraph 10.36 of his report). That is a view which I share. He goes on to link this with the loss of other beach amenities, to conclude (at paragraph 10.44 of his report) that the impact on recreational fishing would be at a major adverse level of significance, and that proposed mitigation measures are unlikely to be adequate to make it acceptable. Major adverse impacts which are not successfully mitigated call the scheme into question. I have to say that this is not a view which I take in relation to line fishing and bait digging alone, having regard to the alternative facilities which would be opened up by the Council's scheme.

11.138 Some businesses would be physically affected by the works [6.224], but again the Council say that good project planning could keep this disruption to the minimum [6.44].

11.139 The only statutory undertakers who had an objection or representation outstanding at the commencement of the inquiries were Yorkshire Water, and their objection was withdrawn during the inquiries [2.10].

11.140 Some objectors are concerned about the loss of the mud berths in the existing harbour, which provide an affordable mooring for a boat owner operating on a limited budget [6.126]. The Council claim that it will be possible to replace the mud berths within the existing harbour [6.110, 6.146], and that, in any event, the improved facilities on offer in the new marina would prove attractive to mud berth owners [6.146]. I accept the Council's evidence on this point. The Council also claim that existing problems with surge and backsend within the harbour would be alleviated by their proposed works [6.88, 6.109]. As indicated above, I prefer the evidence of the Council's expert witnesses on this point.

11.141 Fishermen are concerned at the loss of the repair area at Gummings Wharf [6.98], the need to lock into the marina to use the hoist [6.98], and the future arrangements for the availability of fuel [6.255 - 6.256] and of fresh sea water for the lobster tanks [6.99]. The Council claim that all of these matters can be addressed [6.113, 6.261, 6.114]. I consider that their assurances are reasonable, and I do not see these matters as obstacles to the achievement of the Council's scheme.

11.142 I conclude that, with the exception of the issues of the loss of beach and the visual effects of the proposed works, which are dealt with below, the likely effects of the construction and operation of the marina on local people are not such as to call the Council's proposals into question.

The likely effects of construction and operation of the proposed marina on the environment

11.143 The ES summarises the assessed impact of the proposed works on the environment in Table 5.1 [4.74]. It was prepared under the Applications Rules and in compliance with EC Directive 85/337, as amended by Directive 97/11/EC. Together with the comments from the statutory consultees, the Environmental Assessor's report and the evidence given at the inquiries, this comprises the environmental information which I have taken into account.

11.144 The Council contend that the integrity of the Flamborough Head cSAC would not be compromised by the proposed works [4.77]. In effect, Professor Pritchard agrees. He concludes that the impact of the proposed scheme on the ecological and nature conservation integrity of the cSAC at Flamborough Head would be at a negligible level of significance. He considers, on the basis of the scientific evidence, that the cSAC is located at such a distance from Bridlington as to be outside the zone of influence of the proposed works (paragraphs 10.19 and 10.25 of his report). This is in line with the position of EN [7.4].

11.145 As regards pollution [6.160 and 6.166], Professor Pritchard concludes that, although there would be a potential threat to fauna and flora, including fish and shellfish, in Bridlington Bay arising from the scheme, the issues have been identified and properly addressed. He considers that the mitigation measures proposed would be adequate (paragraph 10.31 of his report), although obviously they would not apply to the area of some 20 hectares where the scheme would actually be built. The habitats of fish and shellfish, lugworms and other bait in that area would be buried under the footprint of the works (paragraph 10.33).

11.146 In relation to impacts on the marine environment, issues hotly contested at the inquiries [6.161 - 163 and 6.167 - 6.168], Professor Pritchard concludes that the impact of the scheme on current flows and the net long-shore southerly movement of sediments would be negligible (paragraph 10.18). He considers that the effects of construction works on water quality and sediment quality, though unwelcome, could be controlled and managed so as not to cause irreversible environmental damage, and that the risks in the longer term arising from the operation of the marina would not be of sufficient magnitude to cause concern, provided that the identified mitigation measures were taken (paragraphs 10.21 and 10.22).

11.147 As regards the effects of the proposed scheme on fauna and flora occupying the site which would be physically affected by the scheme, however, whilst the Environmental Assessor agrees with the judgement of the ES that the scheme would have a major adverse impact, he considers that the Council are misplaced in their judgement that the communities of sand loving organisms could be removed altogether because similar habitats occur elsewhere in the area. Professor Pritchard considers that the Council are equally wrong in terms of their intentions towards the rocky shore communities and the bird population, which are not commonplace and are locally unique. He considers that the mitigation proposed for the rocky shore communities would not be adequate, as the loss of the habitat in this beach area would be part of a seriously damaging incursion into an irreplaceable natural environment in the town. As regards birds, the Council assume that they would find new habitats elsewhere, but Professor Pritchard considers that their disappearance from the town centre would be a significant loss of biodiversity in the town (paragraphs 10.26 to 10.28).

11.148 He regards the potential destruction of ecological features under the footprint of the proposed scheme as particularly serious, because those features form part of an amenity beach in the centre of Bridlington, one which is particularly appealing to the public, and regarded as a central amenity and visual attraction of the town. He concludes that the obliteration of the beach and near shore environment, which is of high ecological and visual quality, would be an impact at a major adverse level of significance, for which no mitigation measures are proposed, and for which mitigation is probably not possible. He sees this as seriously damaging to the natural heritage of Bridlington, and an impact which is unacceptable (paragraphs 10.29 and 10.60 to 10.61).

11.149 For the reasons given in his report, I share Professor Pritchard's views and conclusions on the likely impacts of the proposed works on nature conservation, the marine environment and visual effects set out in paragraphs 11.144 to 11.148 above.

11.150 As regards the alteration in the character of the landscape (paragraphs 10.58 to 10.59 of the Assessor's report), I should be prepared to attach some weight to the potential ameliorative effects of the eventual topside works, but I share Professor Pritchard's concern at the impact of the size of the area affected in relation to the size of the present harbour at Bridlington and the central area of the town around it. As indicated at paragraph 11.109 above, I am not convinced that the size proposed is entirely justified.

11.151 In relation to dredging, the objectors suggest that the amount required to achieve the level of access to the harbour and marina to which the Council aspire would mean that the new limit for disposal at the nearest licensed site (HU 015) would be exceeded [6.81]. This is contested by the Council [6.107], but in any event a variation to the new limit might be sought without damage to the Flamborough Head cSAC, and there are other sites to which dredged material could be taken.

11.152 Turning to the traffic generation implications of the proposed works, I am satisfied that the Council's LTP has been prepared in line with all relevant policy guidance [4.114]. I am entirely persuaded by the Council's evidence that the traffic and the parking demand which would arise from the proposed works could be accommodated by the existing highway network with the minor improvements to highways and to public transport provided for in the LTP and the car parking provision proposed for the development site [4.115 - 4.130]. The objectors' fears regarding future traffic congestion are no more than fears [6.53 - 6.54]. They have no basis in traffic engineering terms [6.60 - 6.61]. Nor is the criticism of the provision of park and ride facilities at Carnaby [6.102 and 7.21] justified in my view; it would represent a facility of some assistance with parking generally

[4.129], but it is not being provided primarily to support the proposed marina scheme [4.121 and 6.117].

11.153 I conclude that there would be no adverse impact from the proposed scheme on nature conservation, including the protected sites at Flamborough Head; that there would be no unacceptably adverse impact on the marine environment; that no problem would arise in connection with dredging or spoil deposition; and that no problem would arise from traffic generated by the scheme. The effects of the loss of the beach, both as a habitat and as an amenity, arising from the scheme would, however, be unacceptable, and the alteration to the character of the landscape which the scheme would cause would be a matter of concern.

The Council's proposals for mitigating any adverse environmental impacts

11.154 Specific mitigation measures proposed have been taken into account above as the environmental impact at which they are aimed has been discussed.

11.155 In general, the Council say that they are implementing all the mitigation measures recommended in the ES [4.80]. In my view, however, this is not accurate. As objectors point out [6.199], paragraph 4.6.1 (iii) of the ES recommends that construction of the marina should not commence until the topside works have been agreed and it can be confirmed that they will start on site within a year of the completion of the works covered by the Works Order. This is clearly not being followed, because the Council's development framework envisages interim uses of the reclaimed areas [4.108]. It recognises that development might not take place immediately following construction of the marina because of prevailing economic conditions. This change on the part of the Council follows their unsuccessful attempt to sign up a developer in advance of confirmation of the Orders [4.160 and 4.162]. The Council now say [6.202] that a start would be dependent only on securing the balance of funding for the works covered by the Works Order.

11.156 The restoration of a requirement to have a developer of the topside in place before any works commence is a specific modification requested by the Commissioners if the Works Order is confirmed [6.267]. In response the Council say that delaying the works which would be authorised by the Works Order until such time as a developer for the topside had been secured could put substantial grant aid at risk [6.268].

11.157 I share the objectors' view that the creation of a large reclaimed area which then took years to develop would be a disaster for Bridlington. I am not convinced that the interim uses suggested [4.108] would do much to reduce the impact of what would become in my view a huge eyesore. I note that two of the leading Council Members who gave evidence in support of the Council's scheme and the Chairman of the BRP which originally brought the scheme forward for consideration all expressed the view that the reclamation works should not commence until a developer was in place for the landside development [5.9 and 5.15]. That is a view which I share, notwithstanding the tight timetable to which it might give rise.

The likely effects of construction and operation of the proposed marina on rights of navigation

11.158 During construction, access to the harbour from the sea would be maintained at all times, any equipment which was being used in connection with construction works would be marked with buoys and lights, and a Fisheries Liaison Officer would be appointed to ensure that the requirements of harbour users would be taken into account [4.71]. The Environmental Assessor concludes at paragraph 10.41 of his report that the impact on navigation during construction would be at a minor adverse level, and acceptable if proposed mitigation measures were implemented.

11.159 I have dealt at paragraph 11.93 above with the suggestion that the entrance to the new marina and harbour would in certain circumstances involve vessels coping with sea conditions more extreme than those encountered in accessing the existing harbour. I continue to find it hard to believe that it would be more difficult to make an entrance 120 metres wide than one 27 metres wide.

11.160 Objectors raise the problem of vessels without motor power clearing the lock and clearing the entrance channel against a south west wind [6.95]. I share the Council's views that these practical issues could readily be addressed [6.112], as they are elsewhere [4.51].

11.161 Objectors also complain that the new entrance would involve an additional journey of about 480 metres in each direction for vessels leaving and returning to the existing harbour [6.96]. I find it hard to believe that this would be seen as a real problem by any fishing vessel putting to sea for some days. As regards powered pleasure boats taking members of the public on short trips, the distance would provide a useful opportunity for them to reduce speed before entering the existing harbour.

11.162 I conclude that there would be no adverse impacts of the construction or operation of the marina on rights of navigation.

The effects of the scheme on any customary rights or other rights in or over land

11.163 Legal submissions were made in relation to various rights, customary or otherwise, over land, and I have dealt with these at paragraphs 11.7 to 11.8, 11.11 to 11.12, 11.28 to 11.36, 11.39 to 11.40, 11.47 to 11.49 and 11.61 above. In some of those cases, however, quite apart from the legal and procedural matters raised, issues arise concerning the impact of the loss of the specific alleged rights.

11.164 If the Works Order were approved, there would remain areas of beach on which people could take their recreation; there would remain areas where people could dig for bait or from which they could fish; there would remain an area from which people could collect seaweed and take sand or gravel (if such a right exists). These might provide less convenient or acceptable opportunities to exercise alleged rights, substantially so in some cases (matters addressed elsewhere in these conclusions); but the alleged rights would not be completely lost. People would also in practice still be able to walk on the South Pier and other parts of the harbour, and to walk on the beach from Wilsthorpe to Bridlington.

11.165 In relation to the beach accesses, however, some of those would be completely lost. The objectors claim that this would mean that both the public and the rescue services would have to make significant detours to access the beach in those areas [6.223 and 6.225]. I accept the Council's response that if the Order is confirmed there would be no beach in those areas to which access might be gained, although there would eventually be extensive public access to the developed area [6.235]. I also accept the fact that the rescue services do not currently launch from any of the accesses which would be affected [6.237]. I note the very sensible and measured approach which the Ramblers' Association took on issues concerning public rights of way [7.37].

11.166 I conclude that there would be no unacceptably adverse effects of the scheme on customary rights or other rights in or over land.

The extent to which the proposals are consistent with policies relating to the conservation of the historic environment

11.167 The legislation and the relevant policy guidance contained in PPG15 are both summarised in section 2 of the report of the Listed Building Assessor. They involve having special regard to the desirability of preserving the building in its setting, together with any object fixed to the building or within its curtilage. As indicated in paragraph 2.138 above, I agree with Dr Moseley that the Old Lifeboat Slip is an ancillary structure, fixed to and forming part of the listed South Pier.

11.168 PPG15 underlines the need for an applicant for listed building consent to be able to justify the submitted proposals. This is to be done by providing "full information" (in the terms of paragraph 3.4 of PPG15) to enable the decision maker to assess the likely impact of the proposals on the special architectural or historic interest of the building and on its setting.

11.169 In my view it is clear that an Order submitted for approval under the Transport and Works Act can be accompanied by an application for deemed planning permission which is only in outline at the same time as an application (or in this case applications) for listed building consent. But the

application for listed building consent will be subject to the same requirements and the same scrutiny (subject only to any variation which might have operated under the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, but which have not been applied in this particular case) as would any normal listed building application.

11.170 Dr Moseley is critical of the level of detail provided in support of the listed building applications in this case (paragraphs 4.59 - 4.68 and 7.39 - 7.40 of her report), and I share her view.

11.171 I note that EH are clearly satisfied that the Council's proposals are consistent with the policies in PPG15, because they have not objected to the applications for listed building consent [7.5 - 7.8]. The extent to which I regard the Council's proposals as satisfying the policies in PPG15 is examined at paragraphs 11.173 to 11.176 below.

11.172 As regards PPG16, I consider that the Council's proposals take account of the policies relating to archaeology and planning. Paragraph 4.4.4 of the ES confirms that no known site or historic land surface would be directly affected by the proposed construction works. The Council have accepted the mitigation measures suggested in the ES to cover possible disturbances to unknown wrecks [6.39]. I note that at paragraphs 10.48 and 10.50 of his report the Environmental Assessor concludes that impacts on the archaeological and other historic features in the marine environment would be acceptable if the proposed mitigation measures are implemented. I share that view.

The impact of the proposed new marina on the character, special interest and the setting of the listed structures

11.173 The Listed Building Assessor deals with the impact of the proposals contained in the Works Order on the character of the listed buildings between paragraphs 7.50 and 7.57 of her report. She concludes that the essential nature of the South Pier (including the Old Lifeboat Slip) would be destroyed by the proposals. As regards the North Pier, in effect her view is that its character remains unaffected.

11.174 Nor does Dr Moseley consider that significant harm would be done by the proposals to the special interest of the North Pier (paragraph 7.57 of her report). In relation to the South Pier, however, she concludes that the burial of the larger part of the main south elevation under land reclamation would severely harm its special interest (paragraph 7.52 of her report).

11.175 As regards the setting of the listed buildings, this is considered at paragraphs 7.58 to 7.67 of Appendix C. Dr Moseley considers the impact of the proposals on the setting would be overwhelming. She concludes that the setting of the two listed structures would be irreparably harmed if the two applications for listed building consent were approved. At paragraphs 7.73 to 7.80, she evaluates the economic benefits of the proposed works in the configuration adopted, and balances them against the harm to the listed piers at paragraph 7.85.

11.176 I concur with the conclusions of the Listed Building Assessor on these issues for the reasons set out in her report. Clearly the proposals do not satisfy the policies in PPG15 relating to listed buildings.

The impact of the removal of the listed parapet wall on the special interest of the listed South Pier

11.177 In the original application for listed building consent for works to the South Pier, the length of the South Pier parapet would have been demolished. Amendments to the original application submitted by the Council at the inquiries (Document APP/69) would have the effect of retaining some 95% of the parapet [4.183].

11.178 On the limited issue of the impact of what would be the removal of the small remaining balance of the parapet wall on the special interest of the listed South Pier, I conclude that this, taken alone, would have a minimal impact.

Summary and overall balancing of conclusions regarding the Works Order and related applications

11.179 It is clear that there are sharply divided views in Bridlington regarding the marina proposal. There was criticism at the inquiries of the way in which various attempts to sample public opinion had been organised and of the fact that a referendum had not been called [6.204 - 6.208 and 6.212 - 6.214]. The inquiries have now provided an opportunity for those who wish to express a view on the various Orders and applications to do so.

11.180 I note that the marina proposals have the overwhelming support of Members of the Council [5.8]. They are also supported by the Bridlington Town Council [7.9 - 7.12], and they thus have the support of both democratically elected representative bodies in the town. They also have the support of the area's MEP [7.18]. The Council's proposals were supported at the inquiries by the Chamber of Trade and Commerce [5.10], the representative organisation of the local hotel owners [5.17] and the RYYC [5.20], and there was written support from the Humber Forum [7.18] and the environmental group, KIMO [7.19] as well as a number of other representative groups. I attach due weight to that impressive level of representative support.

11.181 As indicated above, I consider that a marina development, with associated investment in additional landside facilities, including, in particular, the refurbishment of the Spa and the building of a substantial hotel, would achieve the objective and the benefits which the BRP and the Council set for the proposed Yorkshire Marina.

11.182 The scale, location and design of the proposed works are in principle satisfactory, but I do not consider that a case has been made out for the inclusion of shops, offices and commercial or leisure facilities on the reclaimed land. That being so, I am not convinced that the size of the reclaimed area the Council seek to create is justified. This means that I cannot say that the Council need to acquire all the land for which they seek compulsory powers of acquisition.

11.183 Nor can I say that the Council's proposals are entirely consistent with the Development Plan and the Regional Planning Guidance.

11.184 I consider that the proposals would be reasonably capable of attracting the funding which would be necessary to carry out the proposed works.

11.185 As regards the impact on local people and the environment, the only area of concern is the effect of the loss of a significant area of beach. That loss, however, is one of substantial significance, and it cannot be mitigated.

11.186 It is also a matter of concern that the Council would propose to carry out works which would be authorised by the approval of the Works Order without having in place an approved landside scheme and a chosen developer. On the contrary, they have a prepared fallback position of a list of what they regard as acceptable interim uses for the reclaimed land, despite the fact that leading Councillors and the Chairman of the BRP consider that reclamation works should not start until a development scheme has been approved and a developer is in place.

11.187 I see no unacceptably adverse impacts of the proposed scheme on either navigation or customary rights.

11.188 I consider that the proposals are consistent with the policies contained in PPG16 on archaeology and planning, but in relation to PPG15 the proposed works to the listed piers are unacceptable. I consider that the essential nature of the South Pier would be destroyed by the proposals. Its partial burial would severely harm its special interest, and in my view the setting of the two listed buildings would be irreparably harmed if the two applications for listed building consent were approved.

11.189 I recognise that, without a major boost from a scheme such as the marina proposal, the evidence given at the inquiries is to the effect that the future for Bridlington is one of continuing slow decline. I consider that the various alternative schemes canvassed at the inquiries are all proposals

which would not have the same positive economic effect as that which could flow from the Council's marina proposal. Some of them would deliver a marina, but without the same boost to the economy of the area arising from the building of a hotel and new housing.

11.190 On balance, however, it is my view that the lack of clear justification for the size of the reclaimed area, the conflicts with planning guidance, the environmental impact of the loss of a large and particularly important area of beach, and the damage which would be caused to the listed piers, allied to the uncertainty of the timescale within which eventual development of the reclaimed land would be achieved and the possible impact on tourism in the meantime outweigh the economic benefits which could be anticipated from the Council's proposals for both the marina and the subsequent landside development. I do not consider that the lack of an alternative, at present, capable of delivering the same level of economic benefit as the Council's scheme is an argument strong enough to make such an unacceptable scheme acceptable.

11.191 I conclude that the Works Order should not be made; that deemed planning permission should be refused; and that the two listed building applications should be refused.

11.192 In the event that the Secretary of State reaches a different conclusion on these matters, I have given consideration to the conditions which could be imposed on a deemed planning permission and on listed building consents.

11.193 The conditions on any deemed planning permission set out in Appendix F were discussed at the inquiries in the light of the provisions of Circular 11/95 and would be acceptable to the Council [4.180]. The variations and additions to those conditions sought by the objectors [6.262] have been rejected, because I agree in every respect with the Council in their opposition to them [6.263].

11.194 The conditions on listed building consents set out in Appendix G were also discussed at the inquiries [4.189 - 4.190] in the light of the provisions of Circular 11/95 and Annex B to PPG15. They would be acceptable to the Council apart from conditions 12 and 13 in relation to the South Pier, which are among those suggested by the Listed Building Assessor. They assume that South Pier option 3 (b) of those contained within Document APP/248 is the preferred option. This would encompass the various modifications to the original applications which were made during the course of the inquiries (shown on APP/69, APP/160 and APP/163). It is the Council's preferred option [4.188], and it appears to be the option favoured by EH [4.185]. The conditions in Appendix G include the reduced size Work No 2 (and therefore drawing E588/023 rather than E588/022). If a different alternative is taken, APP/248 contains alternative versions of condition 1 in relation to the South Pier. The variations and additions sought to those conditions by the objectors [6.264] have been rejected, because I agree in every respect with the Council in their opposition to them [6.265]. I have not incorporated the suggestion at 5 in the Appendix to Dr Moseley's report (relating to the calling in of any subsequent applications for listed building consent) as a condition because, although I sympathise with the sentiment, this was not a matter discussed during the conditions sessions at the inquiries.

11.195 Executed unilateral undertakings were submitted by the Council in respect of the works covered by the Works Order (Document APP/262) [4.181] and the works covered by the listed building consent applications (Document APP/261) [4.191]. If the Works Order is made and listed building consents granted, I consider that these undertakings would comply with the Government's policy on planning obligations and that they would be likely to fulfil their stated objectives.

11.196 If the Works Order is made, I also consider that it should be made subject to the modifications sought by the Council in Documents APP/36 and APP/259 [4.173], though it seems to me that amendment P22 in APP/259 should refer to the description of Work No 2 in Schedule 1 to the Order, rather than to Article 3.

11.197 I would also support the inclusion of the first of the modifications sought by the Commissioners [6.267]. This is designed to avoid the compulsory acquisition from the Commissioners of their harbour undertaking ahead of any certainty that the works envisaged by the Works Order would proceed. The making of the Works Order and the granting of outline planning

permission and listed building consents should be sufficient to remove any uncertainty from potential developers. Whilst I take the Council's point that there would then be a tight schedule to avoid loss of potential grant [6.268], the alternative is to risk the compulsory acquisition of the Commissioners' and others' interests before it is clear that any works would be carried out. The receipt of detailed planning permission for the topside works would indicate that grant aid for the work covered by the Works Order had been definitely secured, outstanding design work for that work had been successfully completed, and a definite scheme for the development of the reclaimed land had been approved.

11.198 As regards the second modification sought by the Commissioners, I would not support this. I do not see the need for any provision of indemnity for the Commissioners beyond that generally available.

11.199 As indicated at paragraph 6.266 above, a suggestion was made by one of the objectors that, if the Council's Orders are confirmed, a Liaison Committee should be set up to monitor compliance with conditions and undertakings. I do not conclude that the Council's Orders should be confirmed, but, if they are, I can see the sense in an arrangement of this sort from the point of view of satisfying the public that the development is being carried out in accordance with the agreed limitations. I consider that it is something that the Council might well choose to implement voluntarily, however, rather than being a requirement imposed upon them.

The justification for the replacement of the Commissioners by the arrangements proposed by the Council

11.200 All parties agree that the existing constitution of the Commissioners requires updating to comply with the Trust Ports Review. A new body would be responsible for the harbour whether it was the body proposed by the Council or a reformed body under the Commissioners' proposals. The Council say that qualifying existing Commissioners would be welcome to apply to be members of any new body set up under the Empowerment Order [4.156].

11.201 The Council seek to create a new body to unify the ownership of the land which would be affected by their development proposals [4.160] and to unify the management of the harbour and the proposed marina [4.165]. The Council claim that developers would not commit resources to a scheme where ownership of the land required was split between owners who did not agree [4.160, 4.192]. Management of the harbour and the marina by the same body would, they say, deliver economies of scale and improved safety [4.165].

11.202 I conclude that the only justification for the replacement of the Commissioners by the arrangements proposed by the Council would be if the Works Order were approved and a marina were to be constructed. Since I have indicated that I do not consider that the confirmation of the Works Order is justified, it follows that I do not consider that a case has been made for the replacement of the Commissioners by the Council's proposed arrangements.

11.203 If the Works Order were to be made, however, I would accept that the arguments of the Council for their proposed arrangements are sound. In that event, those arrangements should be supported, but with the modifications sought by the Council to the Revision Order and the Empowerment Order [4.193 and 4.195]. I would not, however, support the modification to the Revision Order proposed by the Commissioners [6.279]. That modification would require the Council to construct the new marina while the Commissioners were still responsible for the harbour and for land required for construction. Given the history and extent of the disagreements between the Commissioners and the Council, I do not consider this to be a viable proposition. If the Works Order were to be confirmed, I would support a modification to the Revision Order similar to that outlined in paragraph 11.197 above in connection with the Works Order. That would make the appointed day one which would arrive before a start fell to be made on any construction works, but it would not dissolve the Commissioners before a time at which it was clear that the development would proceed. As regards the modification sought by the Commissioners to the Empowerment Order [6.294], if the Works Order were made, I would support the Commissioners' request. The Council has already set

up a Shadow Authority [4.155 - 4.156], and this body could work with the Council while a developer was sought and the preparations for building were being made. I do not accept the objection of the Council to this change [6.295].

The effect of the Council's proposals on the status of Bridlington as a trust port and the extent to which they would comply with the guidelines for the governance of trust ports

11.204 If the Council's constitutional and administrative proposals were approved, it seems to me that Bridlington would no longer be a trust port. The new Authority would be governed by the Empowerment Order, which provides in Articles 54 and 55 for any ultimate surplus of capital or revenue to be paid over to the Council for the regeneration of the town of Bridlington rather than being limited to being spent for the purposes of the port. I consider that the Empowerment Order nevertheless complies in all respects with the guidelines of the Trust Ports Review [4.194]. I do not accept the objectors' criticism of the initial appointment arrangements under the Empowerment Order [6.281 - 6.282]. I agree with the Council that Article 8 of the Empowerment Order would ensure independence of the appointees [6.283- 6.284].

The Council's proposals for the management of the harbour and any alternatives

11.205 If a marina is built along the lines proposed in the Works Order (that is, sharing an entrance with the harbour), I consider that it is essential for the harbour and the marina to be under one management. To do otherwise would in my view have an adverse impact on safety, and would squander the savings which could be made by running the two facilities with the same staff [4.165].

11.206 The Commissioners do not believe that a separate marina should be built. They consider that the Council's proposals are too large, in the wrong location, defective in design, contrary to planning guidelines, that they do not respect the listed piers and that they would cause environmental damage. In my opinion, given those views, it would not be sensible to expect the Commissioners to manage the marina proposed by the Council, with or without the harbour.

11.207 If the marina is built as the Council propose, I consider that it would be best managed by the proposed new Authority.

Appropriate arrangements for the management of the harbour if the Works Order were confirmed but the works were not carried out

11.208 In my view it would be completely unfair for the Works Order to be confirmed in a form which allowed the dissolution of the Commissioners to take place and for the Council or the new Authority then to be able to take over the harbour, but not to build (for any reason) the marina which formed the basis of the argument for the approval of the Revision and the Empowerment Orders. That is why I support the modifications requested by the Commissioners to the appointed day provisions of the Works Order and the Empowerment Order dealt with at paragraphs 11.197 and 11.203 above.

11.209 If the proposals in the Council's Orders were to be approved as they stand, but the marina were not to be built, the new Authority would find itself responsible for the management of the harbour without the benefit of the income of the Commissioners' landside estate [4.163], because that would have passed to the Council. This would inevitably mean that the new Authority would operate at a loss [4.167].

Summary of conclusions regarding the Revision Order and the Empowerment Order

11.210 As indicated in paragraph 11.202 above, I conclude that the only justification for the replacement of the Commissioners by the arrangements proposed by the Council would be if the Works Order were approved and a marina were to be constructed. Since I have concluded that the confirmation of the Works Order is not justified, it follows that I do not consider that a case has been made for the replacement of the Commissioners by the Council's proposed arrangements.

11.211 I therefore conclude that the Revision Order and the Empowerment Order should not be made.

11.212 In the event that the Secretary of State reaches a different conclusion on these matters, however, I consider that any approval of the Revision Order and the Empowerment Order should include the modifications indicated at paragraph 11.203 above.

The Commissioners' Order

11.213 The Commissioners put forward their Order by way of response to the Trust Ports Review [8.3]. Revision of their constitutional arrangements would have been necessary whether or not the Council's Orders were under consideration [9.3]. Under their proposals, Bridlington would remain a trust port.

11.214 The Council are correct when they point out that the Commissioners' Order would provide for the existing Chairman to become the first Chairman of the newly constituted Commissioners [10.1]; that there is no requirement for newly appointed Commissioners to act independently [10.2]; that there is no provision for age limits in the Order [10.3]; and that there is no provision to recognise the interests of non beneficiary stakeholders [10.4]. All these matters are at odds with the recommendations of the Trust Ports Review.

11.215 I take the point made on behalf of the Commissioners that the Trust Ports Review provides guidelines rather than a straight jacket [10.7], and that other Orders have been made which are drafted in similar terms to the Commissioners' Order [8.15 - 8.16]. So far as I am concerned, however, the Trust Ports Review provides the template against which revision orders for trust ports should be measured. I am not aware of the circumstances which have led to different provisions being approved in relation to other ports. No evidence has been adduced on this. There may well have been special circumstances applying which are not present in Bridlington. I have heard of no special circumstances affecting Bridlington to justify a different approach from that taken in the Trust Ports Review.

11.216 I therefore conclude that the Commissioners' Order should be made, but in a form modified to reflect more closely the guidance contained in the Trust Ports Review. To that end I recommend the following amendments to the Commissioners' Order:

in Article 4 - add to Article 4(2) a new paragraph "(i) the community interests of the people of Bridlington", and reletter the existing (i) and (j) as (j) and (k).

- add two new paragraphs as follows "(4) In making an appointment under paragraph (1) above or Article 8 below, the Commissioners shall select the persons appointed on merit and having had regard to equal opportunities. (5) Each Commissioner is independent, and, accordingly, in making an appointment under paragraph (1) above or Article 8 below, the Commissioners shall not appoint any Commissioner to be a representative of any particular interest."

in Article 5 - delete Article 5(2)

- renumber Article 5(3) as Article 5(2), in line 1 delete "remaining", and in paragraph (a), delete "three" and substitute "four".
- add a new Article 5(3) - "The Commissioners shall not appoint as a Commissioner any person who would reach the age of 65 years during his first term of office unless the Commissioners resolve that exceptional circumstances justify such an appointment."
- add a new Article 5(4) - "Notwithstanding the provisions of paragraph (2) above, the term of office of any Commissioner appointed under this Article shall cease on his 70th birthday."

in Article 6 - add "subject to the term of office of any Commissioner ceasing on his 70th birthday."

in Schedule 2 - in paragraph 2, delete "appointed under Article 5(2) above", and in paragraph 3, delete "subsequently".

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11.217 I also conclude that the modifications to the Order sought by the Commissioners themselves [8.24] and contained in Document A/7 should be accepted.

12. Recommendations

12.1 I recommend that

The Yorkshire Marina (Bridlington) (Works) Order 2000

be not made; that the associated application for deemed planning permission be refused; and that the applications for listed building consent numbered 01/01237/PLB and 01/01230/PLB be refused.

12.2 I recommend that

The Bridlington Harbour Revision Order 2000

be not made.

12.3 I recommend that

The Yorkshire Marina (Bridlington) Harbour Empowerment Order 2000

be not made.

12.4 I recommend that

The Bridlington Harbour (Constitution) Revision Order 2002

be made, subject to the modifications set out in paragraphs 11.216 and 11.217 above.

Inspector